

EXHIBIT 1

Exhibit 1

STATEMENT OF ADMITTED FACTS

1. Affymetrix, Inc. (“Affymetrix”) is a corporation organized under the laws of the State of Delaware with its principal place of business in Santa Clara, California.

2. Illumina, Inc. (“Illumina”) is a corporation organized under the laws of the State of Delaware with its principal place of business in San Diego, California. Illumina’s business includes the manufacture and sale of BeadArray products and related instrumentation.

3. The ‘531 patent, entitled “Methods for making a device for concurrently processing multiple biological chip assays,” was issued by the U.S. Patent and Trademark Office on August 13, 1996.

4. The ‘716 patent, entitled “Computer-aided visualization and analysis system for sequence evaluation,” was issued by the U.S. Patent and Trademark Office on August 18, 1998.

5. The ‘432 patent, entitled “Products for detecting nucleic acids,” was issued by the U.S. Patent and Trademark Office on March 12, 2002.

6. The ‘365 patent, entitled “Bioarray chip reaction apparatus and its manufacture,” was issued by the U.S. Patent and Trademark Office on June 4, 2002.

7. The ‘243 patent, entitled “Nucleic acid reading and analysis system,” was issued by the U.S. Patent and Trademark Office on November 11, 2003.

8. Richard Rava, Stephen Fodor, and Mark Trulson are named as the inventors of the ‘531 patent.

9. Mark Chee and Robert Lipshutz are named as the inventors of the ‘716 patent.

10. Stephen Fodor, Dennis Solas, and William Dower are named as the inventors of the ‘432 patent.

11. Donald Besemer, Virginia Goss, and James Winkler are named as the inventors of the '365 patent.

12. Michael Pirrung, J. Leighton Read, Stephen Fodor, and Lubert Stryer are named as the inventors of the '243 patent.

EXHIBIT 2

Exhibit 2

**AFFYMETRIX'S STATEMENT OF THE ISSUES
OF FACT THAT REMAIN TO BE LITIGATED**

Affymetrix contends that the issues of fact that remain to be litigated at trial are as follows¹:

I. INFRINGEMENT

1. Whether Illumina's BeadArray nucleic acid arrays infringe claims [asserted claims] of the '432 patent.

2. Whether Illumina's BeadArray nucleic acid arrays, together with the associated scanner, infringe claims [asserted claims] of the '243 patent.

3. Whether the methods employed by Illumina and its customers to use Illumina's BeadArray nucleic acid arrays infringe (directly and indirectly) claims [asserted claims] of the '243 patent.

4. Whether the apparatus and methods employed by Illumina during its BeadArray nucleic acid array decoding process infringe claims [asserted claims] of the '243 patent.

5. Whether the methods employed by Illumina and its customers to make the BeadArray nucleic acid arrays infringe (directly and indirectly) claims [asserted claims] of the '531 patent.

6. Whether Illumina's BeadArray nucleic acid arrays and associated equipment infringe claims [asserted claims] of the '365 patent.

7. Whether the methods Illumina and its customers employ to use the BeadArray nucleic acid arrays infringe (directly and indirectly) claims [asserted claims] of the '365 patent.

¹ To the extent that any issues of law set forth in Exhibit 4 of the Proposed Joint Pre-Trial Order may be considered issues of fact, Affymetrix incorporates those portions of Exhibit 4 herein by reference. To the extent any of the issues of fact set forth in this Exhibit 2 may be considered issues of law, Affymetrix incorporates those portions of this Exhibit 2 in Exhibit 4.

8. Whether Illumina's GenCall software and related products and systems infringe claims [asserted claims] of the '716 patent.

II. WILLFULNESS

1. Whether Illumina infringed the '432 patent while having knowledge of that patent and without having a reasonable good faith belief for concluding that it did not infringe or that the '432 patent was invalid.

2. Whether Illumina infringed the '243 patent while having knowledge of that patent and without having a reasonable good faith belief for concluding that it did not infringe or that the '243 patent was invalid.

3. Whether Illumina infringed the '531 patent while having knowledge of that patent and without having a reasonable good faith belief for concluding that it did not infringe or that the '531 patent was invalid.

4. Whether Illumina infringed the '365 patent while having knowledge of that patent and without having a reasonable good faith belief for concluding that it did not infringe or that the '365 patent was invalid.

5. Whether Illumina infringed the '716 patent while having knowledge of that patent and without having a reasonable good faith belief for concluding that it did not infringe or that the '716 patent was invalid.

III. DAMAGES

1. Whether Affymetrix has proved that it is entitled to its lost profits on certain lost sales and price erosion resulting from Illumina's infringement of any of the patents-in-suit and, if so, in what amount.

2. What reasonable royalty damages is Affymetrix entitled to for any infringement of the patents-in-suit by Illumina for which lost profits damages are not awarded.

3. The amount of prejudgment interest to which Affymetrix is entitled on the damages award.

4. Whether Affymetrix should be awarded increased damages, attorneys' fees, and costs due to Illumina's willful infringement of any of the patents-in-suit.

5. Whether Affymetrix should be awarded its reasonable attorneys' fees, expenses, and costs due to this case being exceptional under 35 U.S.C. § 285.

6. The nature and scope of the injunction to which Affymetrix is entitled.

IV. VALIDITY

1. Whether Illumina has proved by clear and convincing evidence that any or all of the asserted claims of the '432 patent are invalid.

2. Whether Illumina has proved by clear and convincing evidence that any or all of the asserted claims of the '243 patent are invalid.

3. Whether Illumina has proved by clear and convincing evidence that any or all of the asserted claims of the '531 patent are invalid.

4. Whether Illumina has proved by clear and convincing evidence that any or all of the asserted claims of the '365 patent are invalid.

5. Whether Illumina has proved by clear and convincing evidence that any or all of the asserted claims of the '716 patent are invalid.

6. Whether Illumina has proved by clear and convincing evidence that any of its alleged prior art qualifies as prior art to the patents-in-suit.

7. Whether Illumina has proved by clear and convincing evidence that any of its alleged prior art discloses all of the elements of any of the asserted claims of the patents-in-suit.

8. Whether Illumina has proved by clear and convincing evidence that the inventions described and claimed in any of the asserted claims of the patents-in-suit would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art, the differences between each asserted claim of the patents-in-suit and the prior art, the level of ordinary skill in the art at that time, and objective indicia of non-obviousness.

9. Whether Illumina has proved by clear and convincing evidence that the alleged prior art would have suggested to one of ordinary skill in the art that the methods claimed in the patents-in-suit should be carried out.

10. Whether Illumina has proved by clear and convincing evidence that one of ordinary skill in the art would have been motivated to combine the prior art references relied upon by Illumina.

11. Whether Illumina has proved by clear and convincing evidence that its alleged prior art enables one of ordinary skill in the art to make and use the asserted claims of the patents-in-suit without undue experimentation.

12. Whether the commercial success of Affymetrix's claimed inventions, other entities' willingness to take a license to one or more of the patents-in-suit, and the praise of the inventions in the field, *inter alia*, establish the non-obviousness of the invention.

13. Whether Illumina has proved by clear and convincing evidence that any of the claims of the patents-in-suit are not supported by a written description such that one of ordinary skill in the art would understand that the inventor had possession of the claimed invention.

14. Whether Illumina has proved by clear and convincing evidence that any of the patents-in-suit do not enable one of ordinary skill in the art to make and use the asserted claims of the patents-in-suit without undue experimentation.

15. Whether Affymetrix has proved an invention date of the '432 patent prior to December 6, 1990.

16. Whether Affymetrix has proved an invention date of the '716 patent prior to October 21, 1994.

17. Whether Affymetrix has proved an invention date of the '531 patent prior to June 7, 1995.

V. INEQUITABLE CONDUCT

1. Whether Illumina has proved by clear and convincing evidence that Affymetrix withheld material information from the U.S. Patent and Trademark Office with the intent to deceive the PTO.

VI. ILLUMINA'S COUNTERCLAIMS

The Court has previously stayed Illumina's claim for a violation of Section 2 of the Sherman Act. Affymetrix has filed a motion seeking to dismiss, stay, or bifurcate Illumina's remaining competition/business tort counterclaims – that is, its claim under Section 17200 of the California Business & Professions Code and the common law tort of Intentional Interference with Actual and Prospective Business Advantage. These remaining competition/business tort counterclaims are premised on alleged anticompetitive conduct by Affymetrix and depend on Illumina's antitrust allegations. Affymetrix submits that Illumina's competition/business tort counterclaims should either be dismissed or stayed. The issues of fact that remain to be litigated with respect to Illumina's competition/business tort counterclaims are:

1. Whether Illumina has proved that Affymetrix engaged in any conduct that threatens an “incipient violation” of an antitrust law or otherwise engaged in any unlawful business practice that harmed competition.

2. Whether Illumina has standing to assert a claim that Affymetrix made false or misleading statements that were likely to deceive members of the public and, if so, whether Illumina has proved that Affymetrix made any such false or misleading statement.

3. Whether Illumina has proved that it has sustained and is entitled to restitution-type damages as a result of Affymetrix’s alleged anticompetitive acts, *i.e.*, whether Illumina has proved that it has an “ownership” or “vested interest” in any money or property that Affymetrix took from Illumina.

4. Whether Illumina has proved that it had an existing relationship with any identifiable third party and, with respect to each such third party, whether Illumina has proved that Affymetrix committed intentionally wrongful acts that were designed to and did disrupt that relationship *and* that such acts were independently unlawful, separate and apart from the interference, in that such acts constituted monopolization or attempted monopolization under Section 2 of the Sherman Act.

5. Whether Illumina has proved the “relevant market” and that Affymetrix has “market power,” such that Affymetrix has the power to control market output and exclude competitors, including Illumina, from that market.

6. Whether Illumina has proved that it suffered any antitrust or other cognizable injury as a result of the complained of interference.

7. Whether, as an affirmative defense, Affymetrix has proved that the alleged wrongful acts were permissible in view of the privileges of competition and free competition.

8. Illumina did not plead the tort of “interference with contract,” which is a separate tort from intentional interference with actual and prospective business advantage, yet Illumina’s proposed jury instructions and statement of facts that remain to be litigated include this non-alleged tort. Illumina should not be permitted to pursue this non-alleged tort claim. If allowed, Illumina would have to prove the existence of a valid and enforceable contract, not revocable at will, between Illumina and a third party and, as to each such contract, that Affymetrix actually and wrongfully interfered with the contract to the detriment of Illumina.

EXHIBIT 3

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**ILLUMINA'S STATEMENT OF ISSUES OF
FACT THAT REMAIN TO BE LITIGATED**

The following factual issues remain to be litigated.¹ To the extent that any issues of law set forth in Exhibit 5 of the Proposed Joint Pre-Trial Order may be considered issues of fact, Illumina incorporates those portions of Exhibit 5 herein by reference. To the extent any of the issues of fact set forth in this Exhibit 3 may be considered issues of law, Illumina incorporates those portions of this Exhibit 3 in Exhibit 5.

Unfair Competition Issues

1. Whether Affymetrix has engaged in wrongful business activities that have harmed competition.
2. If Affymetrix has engaged in wrongful business activities, what is Illumina entitled to recover from Affymetrix for the value of the profits that Illumina has lost, or the value of any benefit Affymetrix wrongfully obtained, as a result of Affymetrix's wrongful business activities.
3. If Affymetrix has engaged in wrongful business activities, the nature and scope of the injunction that should be applied to Affymetrix for its wrongful business activities.
4. Whether Affymetrix has intentionally interfered with Illumina's contractual relations with one or more third parties.

¹ In addition to these issues, there remain issues to be litigated with respect to Count 7 of Illumina's Counterclaims, which was previously stayed by the Court.

5. Whether Affymetrix has intentionally interfered with Illumina's prospective business relations with one or more third parties.

6. What amount of damages Illumina has suffered as a result of the harm caused by each instance of Affymetrix's intentional interference with Illumina's contractual and prospective business relations with a third party.

7. If Affymetrix did intentionally interfere with Illumina's contractual and prospective business relations with a third party, whether Illumina has proven by clear and convincing evidence that Affymetrix engaged in that conduct with malice, oppression, or fraud, and, if so, what punitive damages should be awarded.

Patent Issues

8. Whether Affymetrix has proven by a preponderance of the evidence that Illumina has directly infringed and continues directly to infringe any of the asserted claims of the patents-in-suit.²

9. Whether Affymetrix has proven by a preponderance of the evidence that Illumina has indirectly infringed and continues indirectly to infringe any of the claims of the patents-in-suit by inducing or contributing to the infringement in the United States of any of those claims by others.

² Affymetrix first sought to assert infringement of several claims of the asserted patents after the close of fact discovery in this case. Illumina objected to this attempt to change the scope of this action, and promptly submitted a letter to the Court to request that Affymetrix be precluded from relying on these newly added claims at trial. (See 3/29/06 Letter from R. Herrmann to the Court, D.I. 235). Illumina's request is pending before the Court. In addition, Illumina is not aware of the specific claims of the patents-in-suit that Affymetrix intends to assert at trial because Affymetrix refuses to streamline the number of asserted claims to a manageable and reasonable amount.

10. Whether any or all of the claims of the patents-in-suit are invalid because they were known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the date of invention of that claim of the patent-in-suit.

11. Whether any or all of the claims of the patents-in-suit are invalid because they were patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for the patent-in-suit in the United States.

12. Whether any or all of the claims of the patents-in-suit are invalid because they were described in a patent granted on an application for patent by another filed in the United States before the date of invention of that claim of the patent-in-suit.

13. Whether any or all of the claims of the patents-in-suit are invalid because the named inventors of the patents-in-suit did not themselves invent the claimed subject matter, but instead derived the subject matter from others who were first to invent it.

14. Whether any or all of the claims of the patents-in-suit are invalid because they were made by another, prior inventor who did not abandon, suppress or conceal the invention.

15. Whether any or all of the claims of the patents-in-suit are invalid because the claimed subject matter would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

16. The scope and content of the prior art to each of the patents-in-suit.

17. The differences between the prior art and the asserted claims of the patents-in-suit.

18. The level of ordinary skill in the art to which each of the patents-in-suit relates.

19. Whether any secondary considerations exist that relate to obviousness and, if so, whether these considerations have a sufficient nexus to any of the inventions of the claims for each of the patents-in-suit.

20. Whether any or all of the claims of the patents-in-suit are entitled to an invention date earlier than the filing date of the United States application for each of the patents-in-suit.

21. Whether any or all of the claims of the patents-in-suit are invalid because they are not sufficiently definite.

22. Whether any or all of the claims of the patents-in-suit are invalid for failure of the patents-in-suit to provide an adequate written description of the full scope of the claimed invention.

23. Whether any or all of the claims of patents-in-suit are invalid for failure of the patents-in-suit to provide a description of the manner and process of making and using the full scope of the claimed invention in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use it.

24. Whether any or all of the patents-in-suit are unenforceable because the applicant failed to disclose material information to the United States Patent and Trademark

Office during the prosecution of the application(s) for the patent(s)-in-suit with intent to mislead the United States Patent and Trademark Office.

25. Whether any or all of the patents-in-suit are unenforceable because Affymetrix has knowingly enforced and attempted to enforce the patents-in-suit while knowing that one or all of the patents-in-suit were unenforceable and/or invalid.

26. Whether any or all of the patents-in-suit are unenforceable because Affymetrix has engaged in fraudulent or wrongful conduct that relates to one or more of the patents-in-suit.

27. Whether Affymetrix, through misleading conduct, led Illumina to reasonably infer that Affymetrix did not intend to enforce any or all of the patents-in-suit against Illumina, and Illumina relied on Affymetrix's conduct such that Illumina will be materially prejudiced if Affymetrix is allowed to proceed with its infringement claims for one or more of the patents-in-suit.

28. Whether Affymetrix unreasonably and inexcusably delayed in filing suit against Illumina such that the delay resulted in material prejudice to Illumina.

29. For each of the patents-in-suit, whether Illumina has proven that each patent was issued after an unreasonable and unexplained delay in prosecution before the United States Patent and Trademark Office.

30. Whether for any or all of the patents-in-suit, Affymetrix has given notice to the public that any article made, offered for sale or sold within the United States or imported into the United States by or for Affymetrix is patented under one or more of the patents-in-suit.

31. Whether Affymetrix communicated a specific charge of infringement for any or all of the patents-in-suit to Illumina prior to filing suit, and if so, when such notice of infringement occurred for each patent-in-suit.

32. In light of the noninfringement, invalidity and/or unenforceability of the claims of the patents-in-suit, whether this is an exceptional case, and whether Illumina is entitled to an award of its attorneys' fees.

33. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents in suit, whether Affymetrix has proven that it has complied with its patent notice requirements.

34. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents-in-suit, whether Affymetrix has proven that it is entitled to a measure of patent damages in the form of lost profits.

35. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents-in-suit, what is the amount of damages sufficient to compensate Affymetrix for such infringement of such claim or claims.

36. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents-in-suit, whether Affymetrix is entitled to any permanent injunctive relief, and the nature and scope of any such injunctive relief to which Affymetrix is entitled.

37. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents-in-suit, whether Affymetrix has proven by clear and convincing evidence that under the totality of the circumstances that Illumina willfully infringed such claim or claims and, if so, whether enhanced damages should be awarded.

38. If Illumina has directly or indirectly infringed any valid and enforceable claim of one or more of the patents-in-suit, whether this is an exceptional case, and whether Affymetrix is entitled to an award of its attorneys' fees.

EXHIBIT 4

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PLAINTIFF'S STATEMENT OF ISSUES OF LAW

I. ISSUES ON WHICH PLAINTIFF BEARS THE BURDEN OF PROOF

A. INFRINGEMENT

35 U.S.C. § 271(a) states:

Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

“The patent document [] grants the patentee a right to exclude others. . . . The Supreme Court has likened patent claims to the description of real property in a deed which sets the bounds to the grant which it contains.” *General Foods Corp. v. Studiengesellschaft Kohle*, 972 F.2d 1272, 1273 (Fed. Cir. 1992) (citation omitted). “With respect to . . . infringement . . . the claims define the patent owner’s property rights whereas infringement is the act of trespassing upon those rights.” *Hoechst-Roussel Pharms. Inc. v. Lehman*, 109 F.3d 756, 759 (Fed. Cir. 1997).

“A patent is infringed if any claim is infringed . . . for each claim is a separate statement of the patented invention.” *Pall Corp. v. Micron Separations Inc.*, 66 F.3d 1211, 1220 (Fed. Cir. 1995), *cert. denied*, 520 U.S. 1115 (1997).

“Determination of infringement, whether literal or under the doctrine of equivalents, is a question of fact.” *Hilgraeve Corp. v. Symantec Corp.*, 265 F.3d 1336, 1341 (Fed. Cir. 2001) (*citing Bai v. L&L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998)). “Infringement requires proof by a preponderance of the evidence.” *Seal-Flex Inc. v. Athletic Track & Court Constr.*, 172 F.3d 836, 842 (Fed. Cir. 1999). “To show infringement of a patent, a patentee must supply sufficient evidence to prove that the accused product or process contains, either literally or under the doctrine of equivalents, every limitation of the properly construed claim.” *Id.*

1. **Literal Infringement**

a. **Claim Construction**

“A patent infringement analysis requires two steps. First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process.” *Hilgraeve Corp.*, 265 F.3d at 1341 (citing *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998)). The first step of the infringement analysis, claim construction, is a question of law. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1451, 1454 (Fed. Cir. 1998) (*en banc*).

On August 16, 2006, this Court issued a memorandum opinion (D.I. 324) which provided the Court’s construction of the claims at issue. The construction of the disputed claims is as follows:

‘432 Patent

1. The phrase “said beads being coded with an encoding system” means “said beads having a property associated with each bead (separate from the binding polymer) that can be used to distinguish one bead from another.”

2. The term “target specific sequence” means “a known polymer sequence that has affinity for another sequence.”

‘243 Patent

3. The term “substrate” means “a material having a rigid or semi-rigid surface.”

4. The term “target nucleic acids” means “nucleic acids that are deliberately exposed to the nucleic acids attached to the substrate.”

‘531 Patent

5. The term “probe array” means “a collection of probes, at least two of which are different, arranged in a spacially defined and physically addressable manner.”

6. The phrase “arranged in a spacially defined and physically addressable manner” means “located in a particular location and capable of being addressed.”

‘365 Patent

7. The phrase “biological polymers immobilized on a surface” means “two or more surface-immobilized biological polymers that are recognized by a particular target.”

8. The term “housing” means “a structure that covers, protects, and supports the probe array.”

‘716 Patent

9. The term “probe” means “a nucleic acid of known sequence that is capable of hybridizing to its complementary sequence.”

10. The term “probe intensity” means “intensity from a labeled sample nucleic acid hybridized to a probe location.”

11. The phrase “corresponding to probe intensities for a plurality of nucleic acid probes” does not require further construction.

12. The phrase “indicating an extent of hybridization” means “indicating the relative strength of binding.”

13. The phrase “comparison of said plurality of probe intensities to each other” means “an examination of the probe intensities of two or more probes in relation to each other.”

14. The phrase “generates a base call identifying said unknown base” means “determines which nucleotide is most likely to be present at a particular position in a nucleic acid sequence.”

15. The phrase “generates a base call ... according to results of said comparison and said sequences of said nucleic acid probes” does not require further construction.

**b. Comparing the Properly Construed Claims to the
Accused Product**

“After claim construction, the next step in an infringement analysis is comparing the properly construed claims with the allegedly infringing devices. This comparison is a question of fact.” *Ecolab, Inc. v. Envirochem, Inc.*, 264 F.3d 1358, 1364 (Fed. Cir. 2001).

“Infringement . . . is determined by comparing an accused product not with a preferred embodiment described in the specifications . . . but with the properly and previously construed claims in suit.” *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985). “[C]laims are infringed, not specifications.” *Id.* “[L]imitations cannot be read into the claims from the specification or the prosecution history.” *Burke Inc. v. Bruno Independent Living Aids, Inc.*, 183 F.3d 1334, 1340 (Fed Cir. 1999). The Federal Circuit “has consistently adhered to the proposition that courts cannot alter what the patentee has chosen to claim as his invention, that limitations appearing in the specification will not be read into the claims, and that interpreting what is meant by a word in a claim is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.” *Id.* (quoting *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989) (citations omitted)). See also *Renishaw PLC v. Marposs Societa’ Per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998).

“An accused device cannot escape infringement by merely adding features, if it otherwise has adopted the basic features of the patent.” *Amstar Corp. v. Envirotech Corp.*, 730 F.2d 1476, 1482 (Fed. Cir. 1984) (citation omitted). Likewise, an accused method “does not avoid literally infringing a method claim . . . simply because it employs additional steps.” *Dow Chem. Co. v. Sumitomo Chem. Co.*, 257 F.3d 1364, 1380 (Fed. Cir. July 25, 2001) (quoting *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1030 (1987)).

Many of the asserted claims use the phrase “comprising” or “comprises” which is open-ended. *See Genentech Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (“‘Comprising’ is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.”).

c. One Cannot Avoid Infringement by Having Another Perform One Step of the Process or Method

“Infringement of a patented process or method cannot be avoided by having another perform one step of the process or method.” *Shields v. Halliburton Co.*, 493 F. Supp. 1376, 1389 (W.D. La. 1980), *aff’d*, 667 F.2d 1232 (5th Cir. 1982), *quoted in E. I. DuPont de Nemours and Co. v. Monsanto Co.*, 903 F. Supp. 680, 734 (D. Del. 1995), *aff’d w/o op.*, 92 F.3d 1208 (Fed. Cir. 1996). “It is well settled that a party cannot avoid infringement merely by having a third party practice one or more of the required steps.” *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 586 F. Supp. 1176, 1226 (D. Kan. 1984), *aff’d in relevant part*, 772 F.2d 1570 (Fed. Cir. 1985).

d. A Company Is Liable For The Infringement Of Others If It Aids Or Abets Their Direct Infringement

(i) A Party Is Liable For Inducing Infringement By Others

Section 271(b) states that “[w]hoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b). If a company knowingly induces the direct infringement of its customers, it is liable for that infringement. *See Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1318 (Fed. Cir. 2003). Proof of induced infringement requires evidence of an intent to cause the infringing acts. *See id.* Evidence of infringing acts and of intent may be circumstantial, however. *See Golden Blount, Inc. v. Robert H. Peterson Co.*, 438 F.3d 1354, 1362-64 (Fed. Cir. 2006) (affirming infringement liability based on packaging of instruction

manual with product); *see also Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1365 (Fed. Cir. 2004) (finding intent based on articles espousing use of product for infringing purpose).

(ii) **A Party Is Liable For Contributory Infringement If It Knowingly Supplies Components For Others' Direct Infringement**

Under § 271(c):

(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

35 U.S.C. § 271(c). According to the Federal Circuit, contributory infringement requires proof of underlying direct infringement and knowledge of infringing capability of a non-staple component. *See Golden Blount*, 438 F.3d at 1363 (affirming judgment of infringement and holding that patentee had adequately demonstrated underlying infringement, non-staple character of defendant's products, and knowledge of their use). The patentee must prove knowledge of the defendant "that the combination for which its components were especially made was both patented and infringing." *Id.* (quoting *Preemption Devices, Inc. v. Minn. Min. & Mfg. Co.*, 803 F. 2d 1170, 1174 (Fed. Cir. 1986)). Although a patentee has the burden of persuasion regarding whether an article is a non-staple article of commerce, once it makes a prima facie case that an article has no substantial noninfringing use, the burden of production shifts to the defendant to show such a use. *Id.* at 1363-64. Whether a component has a substantial noninfringing use is a question of fact. *See Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365, 1379 (Fed. Cir. 2001).

2. Infringement Under the Doctrine of Equivalents

As the Supreme Court has stated:

The language in the patent claims may not capture every nuance of the invention or describe with complete precision the range of its novelty. If patents were always interpreted by their literal terms, their value would be greatly diminished. Unimportant and insubstantial substitutes for certain elements could defeat the patent, and its value to inventors could be destroyed by simple acts of copying.

Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U.S. 722, 731 (2002). Accordingly, “[t]he scope of a patent is not limited to its literal terms but instead embraces all equivalents to the claims described.” *Id.*; see also *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 21 (1997) (holding that “a product or process that does not literally infringe upon the express terms of a patent claim may nonetheless be found to infringe if there is ‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention”).

The Federal Circuit has stated that technology developed after the date of invention is “the ‘quintessential example of an enforceable equivalent.’” *Varco, L.P. v. Pason Systems USA Corp.*, 436 F.3d 1368, 1376 (Fed Cir. 2006) (quoting *Smithkline Beecham Corp. v. Excel Pharm., Inc.*, 356 F.3d 1357, 1364 (Fed.Cir.2004)). Plainly, “[t]he law does not require the impossible. Hence, it does not require that an applicant describe in his specification every conceivable and possible future embodiment of his invention.” *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed.Cir.1985) (*en banc*).

“[T]here is no basis for treating an infringing equivalent any differently than a device that infringes the express terms of the patent. Application of the doctrine of equivalents, therefore, is akin to determining literal infringement, and neither requires proof of intent.” *Warner-Jenkinson*, 520 U.S. at 35. “Infringement under the doctrine of equivalents is an equitable doctrine devised for ‘situations where there is no literal infringement but [where] liability is nevertheless

appropriate to prevent what is in essence a pirating of the patentee's invention.” *Insta-Foam Prods. Inc. v. Universal Foam Sys. Inc.*, 906 F.2d 698, 702 (Fed. Cir. 1990) (quoting *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 870 (Fed. Cir. 1985)). “The doctrine of equivalents is an equitable doctrine designed to prevent parties from realizing the benefits of another's patent by designing around the patent's literal language.” *BOC Health Care, Inc. v. Nellcor Inc.*, 892 F. Supp. 598, 604 (D. Del. 1995). “Infringement under the doctrine of equivalents may be found where those limitations of a claim not found exactly in the accused device are met equivalently.” *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1568 (Fed. Cir. 1996).

The “essential inquiry” in determining infringement under the doctrine of equivalents is: “Does the accused product or process contain elements identical or equivalent to each claimed element of the patented invention?” *Warner-Jenkinson*, 520 U.S. at 40. The doctrine of equivalents involves an element-by-element comparison of the accused method or product and the claim. *Id.* One test for whether a step of an accused method is equivalent to a claim element is whether that step performs substantially the same function in substantially the same way, to obtain substantially the same result. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950); see also *Abraxis Bioscience, Inc. v. Mayne Pharma (USA), Inc.*, 467 F.3d 1370, 1379 (Fed. Cir. 2006).

“Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole.” *Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1016-17 (Fed. Cir. 2006) (quoting *Warner-Jenkinson*, 520 U.S. at 29). In applying the “all elements rule” to determine infringement under the doctrine of equivalents, it is appropriate to identify “the role played by each element in the context of the specific patent claim.” *Warner-Jenkinson*, 520 U.S. at 40. “This analysis . . . will thus inform the inquiry as to whether a

substitute element matches the function, way, and result of the claimed element, or whether the substitute element plays a role substantially different from the claimed element.” *Id.*

The accused method must contain every claim element, but “not necessarily in a corresponding component.” *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1259 (Fed. Cir. 1989). “A patentee is, for example, free to frame the issue of equivalency, if it chooses, as equivalency to a combination of limitations.” *Id.* at 1259 n. 6 (citation omitted). Courts have held that “[o]ne-to-one correspondence of components is not required, and elements or steps may be combined without ipso facto loss of equivalency.” *Ethicon Endo-Surgery Inc. v. U.S. Surgical Corp.*, 149 F.3d 1309, 1320 (Fed. Cir. 1998) (quoting *Sun Studs, Inc. v. ATA Equip. Leasing Inc.*, 872 F.2d 978, 989 (Fed. Cir. 1989), *overruled on other grounds*, *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020 (Fed. Cir.1992)). A finding of infringement under the doctrine of equivalents is permissible unless “no reasonable jury could conclude that an element of an accused device is equivalent to an element called for in the claim, or that the theory of equivalence to support the conclusion of infringement otherwise lacks legal sufficiency.” *Depuy Spine*, 469 F.3d at 1018-19 (reversing for legal error District Court’s holding precluding application of doctrine of equivalents as a matter of law).

B. WILLFULNESS

“Actual notice of another’s patent rights triggers an affirmative duty of due care to avoid infringement.” *nCube Corp. v. Seachange Int’l, Inc.*, 436 F.3d 1317, 1324 (Fed. Cir. 2006). A breach of such a duty can render an infringer liable for willfulness.

Willfulness “is quintessentially a question of fact . . .” *Biotec Biologische Naturverpackungen Gmbh & Co. KG v. Biocorp. Inc.*, 249 F.3d 1341, 1356 (Fed. Cir. 2001). “Whether infringement is willful is a question of fact, and must be established by clear and convincing evidence.” *Comark Communications Inc. v. Harris Corp.*, 156 F.3d 1182, 1190 (Fed.

Cir. 1998). Because of the factual nature of the willfulness inquiry the Federal Circuit has held that determining willfulness is a question for the jury. *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1250 (Fed. Cir.), *cert. denied*, 493 U.S. 853 (1989) (“Willfulness of behavior is a classical jury question of intent. . . . When trial is had to a jury, the issue should be decided by the jury.”)

“The test [for willful infringement] is whether, under all the circumstances, a reasonable person would prudently conduct himself with any confidence that a court might hold the patent invalid or not infringed.” *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 1428 (Fed. Cir. 1988); *Procter & Gamble Co., v. Paragon Trade Brands, Inc.*, 989 F. Supp. 547, 615 (D. Del. 1997). In *SRI Int’l, Inc. v. Advanced Tech. Labs., Inc.*, 127 F.3d 1462, 1464 (Fed. Cir. 1997), the Federal Circuit held:

Although various criteria have been stated for determining “willful infringement,” which is the term designating behavior for which enhanced damages may be assessed, the primary consideration is whether the infringer, acting in good faith and upon due inquiry, had sound reason to believe that it had the right to act in the manner that was found to be infringing. The law of willful infringement does not search for minimally tolerable behavior, but requires prudent, and ethical, legal and commercial actions.

See also nCube Corp. v. Seachange Int’l, Inc., 313 F. Supp. 2d 361, 379 (D. Del. 2004) (*quoting* above language from *SRI Int’l* and upholding jury verdict of willfulness).

“Willfulness requires a showing that the totality of the circumstances evince the egregious conduct that constitutes willful infringement.” *nCube*, 436 F.3d at 1323-24 (*quoting Imonex Servs.*, 408 F.3d at 1377). “In determining whether willfulness has been shown, [the court looks] to the totality of the circumstances, understanding that willfulness, ‘as in life, is not an all-or-nothing trait, but one of degree. It recognizes that infringement may range from unknowing, or accidental, to deliberate, or reckless, disregard of the patentee’s legal rights.’” *Comark*, 156 F.3d at 1190 (*quoting Rite-Hite Corp. v. Kelley Co., Inc.*, 819 F.2d 1120, 1125-26 (Fed. Cir. 1987)). “The

extent to which the infringer disregarded the property rights of the patentee, the deliberateness of the tortious acts, or other manifestations of unethical or injurious commercial conduct, may provide grounds for a finding of willful infringement.” *Golden Blount*, 483 F. 3d at 438 F.3d at 1367-68 (quoting *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1583 (Fed.Cir.1996)).

To establish willful infringement, a patentee must prove by clear and convincing evidence:

1. That the infringer was aware of the patent;
2. That the infringer had no reasonable basis for believing it had a right to engage in the infringing acts either because it had formed a good faith belief that the claim of the patent at issue was invalid or not infringed or both. *Johns Hopkins Univ. v. Cellpro*, 894 F. Supp. 819, 843 (D. Del. 1995).

This “affirmative duty of care . . . usually requires the potential infringer to obtain competent legal advice before engaging in any activity that could infringe another’s patent rights.” *Comark*, 156 F.3d at 1190. When an alleged infringer with notice of a patent does not obtain competent opinion of counsel, the failure to obtain such an opinion can be considered evidence of a violation of the duty of care. *Golden Blount*, 438 F.3d at 1369. In *Jurgens v. CBK, Ltd.*, 80 F.3d 1566, 1571 (Fed. Cir. 1996), the Federal Circuit stated:

When one continues his infringing activity, and fails to investigate and determine, in good faith that he possesses reasonable defenses to an accusation of patent infringement, the infringement is in bad faith. Such conduct occurs when an infringer . . . obtains incompetent, conclusory opinions of counsel only to use as a shield against a later charge of willful infringement, rather than in a good faith attempt to avoid infringing another’s patent.

“The proper time to assess willfulness is at the time the infringer received notice.” *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1276 (Fed. Cir. 1999) (citation omitted); 7 Donald S. Chisum, *Chisum on Patents* § 20.03 [4][b][v][F] (2001) (“Court decisions focus the

willfulness inquiry primarily on the date the infringer began its infringing activities or became aware of the patent, whichever is later.”); *Johns Hopkins Univ. v. Cellpro*, 152 F.3d 1342, 1362 (Fed. Cir. 1998) (dates on which Cellpro received notice of the patents were the proper times for assessing its willfulness). Because the proper time to assess willfulness is at the time the infringer received notice of the patent rights, later developments have little or no relevance. *Odetics*, 185 F.3d at 1276; *Johns Hopkins*, 152 F.3d at 1362.

Other issues that are “very relevant to the issue of willfulness” are “market pressure” and “commercial sales urgency” faced by the infringer. *Stryker Corp. v. Intermedics Orthopedics, Inc.*, 891 F. Supp. 751, 817 (E.D.N.Y. 1995), *aff’d*, 96 F.3d 1409 (Fed. Cir. 1996); *Datascope Corp. v. SMEC, Inc.*, 879 F.2d 820, 828 (Fed. Cir. 1989), *cert. denied*, 493 U.S. 1024 (1990); *Spindelfabrik Suessen-Schurr v. Schubert & Salzer*, 829 F.2d 1075, 1083 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1063 (1988).

A party that continues its accused infringing activity after a patentee files suit can be guilty of willful infringement even if that party presents a non-frivolous defense to infringement. *Crystal Semiconductor*, 246 F.3d at 1351.

C. ASSIGNOR ESTOPPEL

Under the doctrine of assignor estoppel, one who assigns a patent to another party for valuable consideration is barred from contesting the validity of that patent when sued for infringement. *See Pandrol USA, LP v. Airboss Ry. Prods., Inc.*, 424 F.3d 1161, 1166 (Fed. Cir. 2005) (*quoting Diamond Scientific Co. v. Ambico, Inc.*, 848 F.2d 1220, 1224 (Fed. Cir. 1988)) (“Assignor estoppel is an equitable doctrine that prevents one who has assigned the rights to a patent (or patent application) from later contending that what was assigned is a nullity.”). Courts invoke the doctrine “(1) to prevent unfairness and injustice; (2) to prevent one [from] benefiting from his own wrong; (3) [to adopt the] analogy [of]. . . estoppel by deed in real estate; and (4) [to

adopt the] analogy of a landlord-tenant relationship.” *Pandrol USA*, 424 F.3d at 166 (*quoting Diamond Scientific*, 848 F.2d at 1224).

Holding a former employee barred from challenging the validity of a patent assigned to his employer, the Federal Circuit stated:

When the inventor-assignor has signed the Oath, Power of Attorney and Petition, which attests to his belief in the validity of the patents, and has assigned the patent rights to another for valuable consideration, he should be estopped from defending patent infringement claims by proving that what he assigned was worthless. . . . The inventor's active participation in the prosecution and preparation of the patent applications . . . would tilt the equities even more heavily in favor of the assignee, but consideration of this factor is not necessary to the result.

Diamond Scientific, 848 F.2d at 1226.

Assignor estoppel may also apply to those in privity with the assignor. Privity, for the purposes of the estoppel analysis, depends on the nature and extent of the relationship between the assignor and the other party. *See Shamrock Techs., Inc. v. Med. Sterilization, Inc.*, 903 F.2d 789, 193 (Fed. Cir. 1990). For example,

If an inventor assigns his invention to his employer company A and leaves to join company B, whether company B is in privity and thus bound by the doctrine will depend on the equities dictated by the relationship between the inventor and company B in light of the act of infringement. The closer that relationship, the more the equities will favor applying the doctrine to company B.

Id.

D. REMEDIES

1. Injunction

Under Section 283, “[t]he several courts having jurisdiction of cases under th[e] patent] title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” 35 U.S.C. § 283 (2006). “[T]he decision whether to grant or deny injunctive relief rests within the equitable

discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity. . . .” *eBay, Inc. v. MercExchange, L.L.C.*, 126 S. Ct. 1837, 1841 (2006). Further, “the Patent Act also declares that ‘patents shall have the attributes of personal property,’ § 261, including ‘the right to exclude others from making, using, offering for sale, or selling the invention,’ § 154(a)(1).” *Id.* at 1840.

According to well-established principles of equity, a plaintiff seeking a permanent injunction “must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.* at 1839.

In one recent case, when applying this four-factor test in a case in which the infringer competed directly with the patent holder, the court observed:

Justice Kennedy [concurring in *eBay*] recognized that “[t]o the extent earlier cases establish a pattern of granting an injunction against patent infringers almost as a matter of course, this pattern simply illustrates the result of the four-factor test in the contexts then prevalent.” . . . Since a patent grants the right to exclude others from practicing the invention . . . the right to exclude remains a relevant issue for courts to consider when weighing the equities for and against an application for permanent injunction. Although GSF argues that it is not using Transocean's invention to influence common customers, GSF admits that “Transocean and GlobalSantaFe have the same customers in the deepwater rig market.” GSF has not cited any case in which a continuing infringer in direct competition with a patent holder has not been permanently enjoined from using the patented invention to compete against the patent holder.

Transocean Offshore Deepwater Drilling, Inc. v. GlobalSantaFe Corp., No. H-03-2910, 2006 WL 3813778, *3 (S.D. Tex., Dec. 27, 2006) (granting injunction to patentee) (citations omitted).

2. Damages

35 U.S.C. § 284 states:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

“The measurement of patent damages is a question of fact.” *Crystal Semiconductor*, 246 F.3d at 1345.

The patent statute “imposes no limitation on the types of harm resulting from infringement that the statute will redress. The section’s broad language awards damages for any injury as long as it resulted from the infringement.” *King Instruments Corp. v. Perego*, 65 F.3d 941, 947 (Fed. Cir. 1995), *cert. denied*, 517 U.S. 1188 (1996). “The phrase ‘damages *adequate to compensate*’ means full compensation for ‘any damages’ [the patent owner] suffered as a result of the infringement.” *Grain Processing Corp. v. American Maize-Prods. Co.*, 185 F.3d 1341, 1349 (Fed. Cir. 1999) (citing *General Motors Corp. v. Devex Corp.*, 461 U.S. 648 (1983)). “Full compensation includes any foreseeable lost profits the patent owner can prove.” *Id.* A damage award shall be “in no event less than a reasonable royalty,” which sets the floor below which a damage award may not fall. *See Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1544 (Fed. Cir.), *cert. denied*, 516 U.S. 867 (1995). “[T]he Supreme Court has interpreted [35 U.S.C. § 284] to mean that ‘adequate’ damages should approximate those damages that will *fully compensate* the patentee for infringement.” *Id.* at 1545.

The patent owner must prove the amount of its damages by a preponderance of the evidence. *See SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 926 F.2d 1161, 1164 (Fed. Cir. 1991). The patentee, however, need not prove its damages with absolute certainty. *See W.R. Grace & Co.-Conn. v. InterCat, Inc.*, 60 F. Supp. 2d 316, 321 (D. Del. 1999). “[I]t will be enough if the

evidence show [sic] the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.” *Story v. Parchment Paper Co.*, 282 U.S. 555, 563 (1931). Moreover, “any doubt about the correctness [of damages] is resolved against the infringer.” *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1576 (Fed. Cir. 1989), *cert. denied*, 493 U.S. 1022 (1990); *W.R. Grace*, 60 F. Supp. 2d at 321. “[F]undamental principles of justice require us to throw the risk of any uncertainty upon the wrongdoer instead of upon the injured party.” *Paper Converting Machine Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 22 (Fed. Cir. 1984).

a. Lost Profits

“To recover lost profits damages . . . , the patent owner must show that it would have received the additional profits ‘but for’ the infringement. The patent owner bears the burden to present evidence sufficient to show a reasonable probability that it would have made the asserted profits absent infringement.” *King Instruments*, 65 F.3d at 952. The Federal Circuit “has prescribed no one particular method by which the patent owner must meet this burden; ‘the methodology of assessing and computing damages is committed to the sound direction of the district court.’” *Id.* (citation omitted).

“[T]he statutory measure of ‘damages’ is ‘the difference between [the patent owner’s] pecuniary condition after the infringement, and what his condition would have been if the infringement had not occurred.’” *Grain Processing*, 185 F.3d at 1350 (*citing Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476, 507 (1964) (plurality opinion)). To prove lost profits, a patentee must reconstruct the market to show “likely outcomes with infringement factored out of the economic picture.” *Id.* As the Federal Circuit explained:

Within this framework, trial courts, with this [C]ourt’s approval, consistently permit patentees to present market reconstruction theories showing all of the ways in which they would have been better off in the “but for world,” and accordingly, to recover lost profits in a wide variety of forms In sum, courts have given

patentees significant latitude to prove and recover lost profits for a wide variety of foreseeable economic effects of the infringement.

Id. (citations omitted).

To recover lost profits based on lost sales, the patent owner has an initial burden to show a reasonable probability that, but for the infringement, it would have made the infringer's sales. See *Crystal Semiconductor*, 246 F.3d at 1336; *State Indus.*, 883 F.2d at 1577. The patent owner is not required, however, to negate all possibilities that a purchaser might have bought a different product or might have foregone the purchase altogether. *State Indus.*, 883 F.2d at 1577. Once the patent owner has met its initial burden, "[t]he burden then shifts to the infringer to show that the ['but for' claim] is unreasonable for some or all of the lost sales." *Rite-Hite*, 56 F.3d at 1545. The patentee need not use the patented invention as a prerequisite to recovery of lost profits. *King Instruments*, 65 F.3d at 947.

Lost profits are available on collateral or derivative product sales if "[a]ll the components together . . . are analogous to components of a single assembly or [are] parts of a complete machine or they . . . constitute a functional unit" *Rite Hite* 56 F.3d at 1144. See also *Paper Converting Machine Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 23 (Fed. Cir. 1984) (holding that "if in all reasonable probability the patent owner would have made the sales which the infringer has made, what the patent owner in reasonable probability would have netted from the sales denied to him is the measure of his loss, and the infringer is liable for that.")

One recognized method for proving lost sales – often called the *Panduit* test – is for the patent owner to prove: (1) demand for the patented product; (2) absence of acceptable noninfringing substitutes; (3) manufacturing and marketing capacity to exploit the demand; and (4) the amount of the profit that it would have made. *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156 (6th Cir. 1978). The *Panduit* test is an acceptable, though not exclusive, test

for determining the availability of lost profits. *See Tate Access Floors, Inc., v. Maxcess Techs., Inc.*, 222 F.3d 958, 971 (Fed. Cir. 2000) (noting that a patent owner may establish lost profits using the *Panduit* approach); *BIC Leisure Prods., Inc. v. Windsurfing Int'l*, 1 F.3d 1214, 1218 (Fed. Cir. 1993).

“The substantial number of sales . . . of infringing products containing the patented features itself is compelling evidence of demand for the patented product.” *See Gyromat Corp. v. Champion Spark Plug Co.*, 735 F.2d 549, 552 (Fed. Cir. 1984).

As the *Grain Processing* court held:

When an alleged alternative is not on the market during the accounting period, a trial court may reasonably infer that it was not available as a noninfringing substitute at that time. . . . The accused infringer then has the burden to overcome this inference by showing that the substitute was available during the accounting period. . . . Mere speculation or conclusory assertions will not suffice to overcome the inference. After all, the infringer chose to produce the infringing, rather than noninfringing, product. Thus, the trial court must proceed with caution in assessing proof of the availability of substitutes not actually sold during the period of infringement. Acceptable substitutes that the infringer proves were available during the accounting period can preclude or limit lost profits; substitutes only theoretically possible will not.

185 F.3d at 1353. “Consumer demand defines the relevant market and relative substitutability among products therein. . . . Important factors shaping demand may include consumers’ intended use for the patentee’s product, similarity of physical and functional attributes of the patentee’s product to alleged competing products, and price.” *Id.* at 1355. “While there may be competing devices available in the marketplace, the ‘mere existence of a competing device does not make that device an acceptable substitute.’” *Kalman v. The Berlyn Corp.*, 914 F.2d 1473, 1484 (Fed. Cir. 1990) (citation omitted). “It is clear that ‘[a] product lacking the advantages of [the] patented [device] can hardly be termed a substitute ‘acceptable’ to the customer who wants those advantages.’” *Id.* (citing *Panduit*, 575 F.2d at 1162).

Another way to establish lost profits from lost sales is the market share approach that the Federal Circuit adopted in *State Industries*. Under this approach, even in the presence of acceptable noninfringing alternatives, a patent owner can recover lost profits based on its market share of the infringing sales, if the patent owner meets the other *Panduit* factors and shows an established market share in the relevant product market. *State Indus.*, 883 F.2d at 1576.

In other words, proof of market share can be substituted for the second factor of the *Panduit* factor test, the absence of acceptable noninfringing substitutes. The Federal Circuit explained its rationale as follows:

To the extent infringing competitors got credit for sales that should have gone to State, the share of the market against which Mor-Flo's damages might be assessed is reduced. So we think that in these circumstances the presence or absence of acceptable noninfringing alternatives does not matter. The question then becomes whether an established market share combined with the other Panduit factors is sufficient to show State's loss to a reasonable probability.

Id. at 1578.

Courts frequently employ the "market share" approach to determine lost profits based on the patentee's market share in the presence of acceptable noninfringing alternatives. *See, e.g., Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1222-23 (Fed. Cir. 1995), *cert. denied*, 520 U.S. 1115 (1997) (holding that patentee was entitled to lost profits on 25% of infringer's sales in a three party market and reasonable royalties on the remaining sales of infringing products); *King Instruments*, 65 F.2d at 953 (applying market share analysis where patentee possessed 70% of the market); *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834, 847 (Fed. Cir. 1992) (remanding to district court with direction to apply market share analysis to account for noninfringing sales by third party); *Procter & Gamble*, 989 F. Supp. at 601-02 (applying market share analysis to the second prong of the *Panduit* analysis); *Schneider (Europe) AG v. SciMed Life*

Sys., Inc., 852 F. Supp. 813, 858-59 (D. Minn. 1994), *aff'd*, 60 F. 3d 839 (Fed. Cir.), *cert. denied*, 516 U.S. 990 (1995) (applying market share analysis to sales made after an acceptable noninfringing alternative entered the market); *Ziggity Sys., Inc. v. Val Watering Sys.*, 769 F. Supp. 752, 823 (E.D. Pa. 1990) (applying market share analysis).

The patent owner may prove the third factor -- capacity -- by showing that it had the ability to meet the demand for the quantity of sales that it claims to have lost. *See Bio-Rad Lab., Inc. v. Nicolet Instr. Corp.*, 739 F.2d 604, 616 (Fed. Cir.), *cert. denied*, 469 U.S. 1038 (1984). Finally, the patent owner may prove the fourth factor -- the amount of profits it lost -- by reasonably quantifying the incremental profits it would have made from the sales it lost. *See Paper Converting Mach. Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 22 (Fed. Cir. 1984).

A portion of fixed or overhead costs is not allocated to the hypothetically increased sales. *Id. See also Stryker*, 891 F. Supp. at 825-26 (“[A]n incremental profits calculation is the proper measure of profit loss Incremental profits are the difference between gross revenues resulting from regaining the sales lost due to infringement and the incremental cost of making those sales. This measure of profit loss is appropriate when the patentee’s fixed costs do not rise, or only slightly increase, relative to increases in production.”).

b. Reasonable Royalty

“A patentee is entitled to no less than a reasonable royalty on an infringer’s sales for which the patentee has not established entitlement to lost profits.” *Rite-Hite*, 56 F.3d at 1554. “A patentee receives a reasonable royalty for any of the infringer’s sales not included in the lost profit calculation.” *Crystal Semiconductor*, 246 F.3d at 1354 “Thus, a patentee may obtain lost profit damages for that portion of the infringer’s sales for which the patentee can demonstrate ‘but for’ causation and reasonable royalties for any remaining infring[ement].” *Id.*

“A reasonable royalty is the amount of money that would be agreed to in a hypothetical arms length negotiation between the owners of the patent rights and the infringer, with both operating under the assumption that the negotiated patent is not invalid and is infringed.” *Johns Hopkins*, 894 F. Supp. at 838. “[W]hat an infringer would prefer to pay is not the test for damages.” *Rite-Hite*, 56 F.3d at 1555. “[T]hat the parties might have agreed to a lesser royalty is of little relevance, for to look only at that question would be to pretend that the infringement never happened; it would also make an election to infringe a handy means for competitors to impose a compulsory license policy upon every patent owner.” *Id.* “There is no rule that a royalty be no higher than the infringer’s net profit margin.” *State Indus.*, 883 F.2d at 1580.

The hypothetical negotiation is presumed to take place on the eve of first infringement. *Hanson v. Alpine Valley Ski Area, Inc.*, 718 F.2d 1075, 1079 (Fed. Cir. 1983). “The Court also must assume, for purposes of the hypothetical negotiation, that all parties would have known all relevant information.” *Mobil Oil Corp. v. Amoco Chem. Co.*, 915 F. Supp. 1333, 1353 (D. Del. 1995). The hypothetical negotiation speaks of negotiations as of the time infringement began, yet a court may look to events and facts that occurred thereafter and that could not have been known to or predicted by the hypothetical negotiators. *Studiengesellschaft Kohle GmbH v. Start Indus. Inc.*, 862 F.2d 1564, 1571-72 (Fed. Cir. 1988). A jury may “rely on evidence of bundling and convoyed sales in determining the scope of the royalty base.” *Interactive Pictures Corp. v. Infinite Pictures, Inc.* 274 F.3d 1371, 1385 (Fed. Cir. 2001). A jury may consider industry royalty rates in determining an applicable royalty rate, but these “do not necessarily establish a ceiling for the royalty that may be assessed after an infringement trial. *Bio-Rad Laboratories v. Nicolet Instrument Corp.*, 739 F.2d 604, 617 (Fed. Cir. 1984).

In determining a reasonable royalty, courts often apply the fifteen factors first enunciated in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120

(S.D.N.Y. 1970), *modified and aff'd*, 446 F.2d 295 (2d Cir.), *cert. denied*, 404 U.S. 870 (1971). *See Unisplay, S.A. v. American Elec. Sign Co.*, 69 F.3d 512, 517, n.7 (Fed. Cir. 1995) (*citing to Georgia-Pacific factors*). These factors are:

1. The royalties received by the patentee for the licensing of the patent in suit, proving or tending to prove an established royalty.
2. The rates paid by the patentee, the licensee, or others for the use of other patents comparable to the patent in suit.
3. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or nonrestricted in terms of territory or with respect to whom the manufactured product may be sold.
4. The licensor's established policy and marketing program to maintain his patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly.
5. The commercial relationship between the licensor and licensee, such as, whether they are competitors in the same territory in the same line of business; or whether they are inventor and promotor [sic].
6. The effect of selling the patented specialty in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of his non-patented items; and the extent of such derivative or convoyed sales.
7. The duration of the patent and the term of the license.
8. The established profitability of the product made under the patent; its commercial success; and its current popularity.
9. The utility and advantages of the patent property over the old modes or devices, if any, that had been used for working out similar results.

10. The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. The extent to which the infringer has made use of the invention; and any evidence probative of the value of that use.

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.

13. The portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer.

14. The opinion testimony of qualified experts.

15. The amount that a licensor (such as the patentee) and a licensee (such as the infringer) would have agreed upon (at the time the infringement began) if both had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee – who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention – would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a prudent patentee who was willing to grant a license.

Georgia Pacific, 318 F. Supp. at 1120.

3. Enhanced Damages

35 U.S.C. § 284 states in pertinent part that “the court may increase the damages up to three times the amount found or assessed.” The Court may enhance damages, up to trebling the actual damages, upon a finding of willful infringement. *Johns Hopkins*, 152 F.3d at 1364. In

exercising its discretion to enhance damages, the Court should consider the weight of the evidence of the infringer's culpability in light of the following factors:

1. whether the infringer copied the ideas or design of another,
2. whether the infringer, when he knew of the other's patent protection, investigated the scope of the patent and formed a good faith belief that it was invalid or that it was not infringed,
3. the infringer's behavior as a party to the litigation,
4. the infringer's size and financial condition,
5. the closeness of the case,
6. the duration of the infringer's misconduct,
7. any remedial action of the infringer,
8. the infringer's motivation for harm, and
9. whether the infringer attempted to conceal its misconduct.

Id. at 1352 n.16 and 1364-65. *See also Imonex Servs., Inc. v. W.H. Munzprufer Dietmar Trenner GMBH*, 408 F.3d 1374, 1377 (Fed. Cir. 2005) (“[The Federal Circuit] has identified several criteria for assessing damages, including, *inter alia*, whether the infringer, when he knew of the other's patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed, and the duration of defendant's misconduct”).

4. Attorneys' Fees

35 U.S.C. § 285 provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” Determining whether a case is exceptional and whether attorneys' fees should be granted under 35 U.S.C. § 285 is a two-step process. *Tate Access Floors*, 222 F.3d at 964. The first step is a factual determination whether the case is exceptional, and the second step, the Court exercises its discretion to determine whether attorneys' fees should be awarded. *Id.*

The types of conduct that can form the basis for finding a case to be exceptional include willful infringement, misconduct during litigation and vexatious litigation. *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed. Cir. 1989). Such conduct must be supported by clear and convincing evidence. *Id.*

5. Prejudgment Interest

The patent statute authorizes awards of prejudgment interest. 35 U.S.C. § 284. The Supreme Court has held that “prejudgment interest should ordinarily be awarded.” *General Motors*, 461 U.S. at 655. “An award of prejudgment interest serves to make the patentee whole because the patentee also lost the use of its money due to infringement.” *Crystal Semiconductor*, 246 F.3d at 1361. In *General Motors*, the Supreme Court held that prejudgment interest is the rule, not the exception. *Id.*

“The rate of prejudgment interest and whether it should be compounded or uncompounded are matters left largely to the discretion of the district court. . . . In exercising that discretion, however, the district court must be guided by the purpose of prejudgment interest, which is ‘to ensure that the patent owner is placed in as good a position as he would have been had the infringer entered into a reasonable royalty agreement.’” *Bio-Rad*, 807 F.2d at 969 (citation omitted).

II. ISSUES ON WHICH DEFENDANTS BEAR THE BURDEN OF PROOF

A. VALIDITY

35 U.S.C. § 282 states in pertinent part:

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such in validity.

“A party seeking to establish that particular claims are invalid must overcome the presumption of validity in 35 U.S.C. § 282 by clear and convincing evidence.” *Nystrom v. TREX Co., Inc.* 424 F.3d 1136, 1149 (Fed. Cir. 2005) (quoting *State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1067 (Fed.Cir.2003)). “Clear and convincing evidence has been described as evidence which proves in the mind of the trier of fact ‘an abiding conviction that the truth of [the] factual contentions are highly probable.’” *Intel Corp. v. U.S. Int’l Trade Comm’n*, 946 F.2d 821, 830 (Fed. Cir. 1991) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

The presumption of validity “exists at every stage of the litigation.” *Canon Computer Sys., Inc. v. Nu-Kote Int’l, Inc.*, 134 F.3d 1085, 1088 (Fed. Cir. 1998). “[T]he burden of persuasion is and remains always upon the party asserting invalidity.” *American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1358 (Fed. Cir.), cert. denied, 469 U.S. 821 (1984) (emphasis in original). “The presumption is never annihilated, destroyed or even weakened, regardless of what facts are of record.” *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1574-75 (Fed. Cir. 1984) (emphasis in original). “[T]he burden of proving invalidity never shifts from the party asserting invalidity.” *Imperial Chem. Indus., PLC v. Danbury Pharmacal, Inc.*, 777 F. Supp. 330, 368 (D. Del. 1991), *aff’d w/o op.*, 972 F.2d 1354 (Fed. Cir. 1992).

“The burden of proof arises from the presumption that the Patent Office properly carried out its administrative functions.” *BOC Health Care*, 892 F. Supp. at 602. “It is not necessary that the court hold a patent valid; it is only necessary that it hold that the patent challenger has failed to carry its burden.” *Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, 1996 WL 621830 at *5 (D. Del. 1996), *aff’d*, 228 F.3d 1338 (Fed. Cir. 2000). “[W]here the challenger fails to identify any persuasive evidence of invalidity, the very existence of the patent satisfies the patentee’s burden on the validity issue.” *Canon Computer Sys., Inc.*, 134 F.3d at 1088.

Where the art relied on at trial was considered by the Patent Office, the party asserting invalidity “has the added burden of overcoming the deference that is due to a qualified government agency presumed to have properly done its job, which includes one or more examiners who are assumed to have some expertise in interpreting the references and to be familiar from their work with the level of skill in the art and whose duty it is to issue only valid patents.” *American Hoist & Derrick*, 725 F.2d at 1359.

The United States Supreme Court “has consistently held that failure of the patentee to make use of a patented invention does not affect the validity of the patent.” *Special Equipment Co. v. Coe*, 324 U.S. 370, 378-79 (1945).

1. Prior Art

One who challenges the validity of a patent bears the burden of establishing that a reference is “prior art” by clear and convincing evidence. *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1576 (Fed. Cir. 1996). The *Mahurkar* Court held:

By challenging the validity of the ‘155 patent, Bard bore the burden of persuasion by clear and convincing evidence on all issues relating to the status of the Cook catalog as prior art.

“The presumption of validity . . . requires those challenging validity to introduce clear and convincing evidence on all issues relating to the status of a particular reference as prior art.” *Sandt Tech. Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344, 1350 (Fed. Cir. 2001).

Even if a patent challenger can establish by clear and convincing evidence that a reference predates the filing date of the application from which the patent claims priority, it is not prior art under § 102(a) if it was not publicly available before the invention of the claimed subject matter. See *Mahurkar*, 79 F.3d at 1577 (“Any suggestion that a document is prior art because it appears before the filing date of a patent ignores the requirements of section 102(a). Section 102(a) explicitly refers to invention dates, not filing dates. Thus, under section 102(a), a document is prior

art only when published before the invention date.”) The effective priority date for comparison with publicly available references that can be claimed prior to the filing date is limited by § 102(b) to one year prior to filing, however. *See* 35 U.S.C. § 102(b).

A patentee confronted with a reference that predates the filing date of the application to which the asserted patent claims priority has the burden to produce evidence of a prior conception date. *See Mahurkar*, 79 F.3d at 1577. Once the patentee meets that burden of production, the patent challenger has the burden to prove that the reference it contends is prior art predates invention. *See id.* at 1578.

“To have conceived of an invention, an inventor must have formed in his or her mind ‘a definite and permanent idea of the complete and operative invention, as it is hereafter to be applied in practice.’” *Id.* at 1577 (*quoting Burroughs Wellcome Co. v. Barr Labs., Inc.*, 40 F.3d 1223, 1228 (Fed.Cir.1994)). Inventor testimony offered to demonstrate conception prior to the filing date must be supported by some corroborating evidence, documentary or otherwise. *Id.* (*citing Price v. Symsek*, 988 F.2d 1187, 1195 (Fed.Cir.1993)). Evidence of corroboration is weighed according to a “rule of reason” standard. *Price*, 988 F.2d at 1195. In *Price*, 988 F.2d, n.3 at 1195, the Federal Circuit enumerated factors bearing on the rule of reason analysis:

Factors bearing on the inventor's credibility and on whether the inventor's testimony has been adequately corroborated are: (1) delay between the event and the trial, (2) interest of corroborating witnesses, (3) contradiction or impeachment, (4) corroboration, (5) the corroborating witnesses' familiarity with details of alleged prior structure, (6) improbability of prior use considering state of the art, (7) impact of the invention on the industry, and (8) relationship between witness and alleged prior user.

(citation omitted).

Where a patentee relies on documentary evidence to prove prior invention, “[t]his court does not require corroboration. . . . The trier of fact can conclude for itself what documents

show, aided by testimony as to what the exhibit would mean to one skilled in the art.” *Mahurkar*, 79 F.3d at 1377-78.

A secret prior method or process does not qualify as prior art, even if the product of that process is disclosed to the public. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

2. Anticipation

35 U.S.C. § 102 states in pertinent part:

A person shall be entitled to a patent unless —

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States[.]

Anticipation is a question of fact. *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 995 (Fed. Cir. 2006). “Invalidity based upon lack of novelty (often called ‘anticipation’) requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee.” *Oney v. Ratliff*, 182 F.3d 893, 895 (Fed. Cir. 1999) (*citing Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302 (Fed. Cir. 1995)).

“A claim is anticipated and therefore invalid only when a single prior art reference discloses each and every limitation of the claim.” *Glaxo Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047 (Fed. Cir.), *cert. denied*, 516 U.S. 908 (1995). “Anticipation requires a showing that each limitation of a claim is found in a single reference, either expressly or inherently.” *Atofina*, 441 F.3d at 999 (*quoting Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1369 (Fed.Cir.2005)). “There must be no difference between the claimed invention and the reference disclosure, as viewed by a

person of ordinary skill in the field of the invention.” *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

“For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art.” *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1473 (Fed. Cir. 1997). “Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. An expert’s conclusory testimony, unsupported by the documentary evidence, cannot supplant the requirement of anticipatory disclosure in the prior art reference itself.” *Id.*

“Prior art does not ‘anticipate’ for purposes of § 102 even ‘if the general aspects are the same and the differences in minor matters [is] [sic] . . . such as would suggest itself to one of ordinary skill in the art.’” *BOC Health Care*, 892 F. Supp. at 603 (*quoting Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed. Cir. 1984)). *See also Jamesbury Corp. v. Litton Indus. Prod., Inc.*, 756 F.2d 1556, 1560 (Fed. Cir. 1985) (“A prior art disclosure that ‘almost’ meets [the] standard . . . does not anticipate.”).

To anticipate, “[a] reference must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.” *In re Spada*, 911 F.2d 705, 708 (Fed.Cir.1990). Thus, “[t]o anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipatory subject matter.” *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1566 (Fed. Cir. 1996). “What a prior art reference discloses in an anticipation analysis is a factual determination.” *Yoon Ja Kim v. Conagra Foods, Inc.*, 465 F.3d 1312, 1325 (Fed. Cir. 2006) (*quoting Novo Nordisk Pharm., Inc. v. Bio-Tech. Gen. Corp.*, 424 F.3d 1347, 1355 (Fed.Cir.2005)). “Invalidity by anticipation requires that the four corners of a single, prior art document describe

every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation.” *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed.Cir.2000)). “Whether making and using the invention would have required undue experimentation, and thus whether the disclosure is enabling, is a legal conclusion based upon several underlying factual inquiries.” *Amgen, Inc. v. Biogen, Inc.*, 973 F. Supp. 39, 43 (D. Mass. 1997) (*quoting Genentech, Inc. v. Novo Nordisk, A/S*, 108 F.3d 1361, 1365 (Fed.Cir.1997)).

3. Obviousness¹

35 U.S.C. § 103 states in pertinent part:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A claimed invention is unpatentable if the differences between the subject matter and the prior art “are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001) (citation omitted); *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1349 (Fed. Cir. 2001).

“Whether a claimed invention is unpatentable as obvious under 35 U.S.C. § 103 is a question of law based on underlying findings of fact.” *Okajima v. Bourdeau*, 261 F.3d 1350, 1354

¹ Affymetrix recognizes that the Supreme Court’s decision in *KSR Int’l v. Teleflex Co.*, No. 04-1350, may have bearing on the precise analysis used by courts to assess patentability under § 103.

(Fed. Cir. 2001) (citation omitted). The “underlying factual inquiries [the Graham factors] includ[e]: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the prior art and the claimed invention; and (4) the extent of any objective indicia of non-obviousness.” *Winner Int’l Royalty Corp., v. Ching-Rong Wang*, 202 F.3d 1340, 1348 (Fed. Cir.), *cert. denied*, 530 U.S. 1238 (2000); *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966). “[Federal Circuit] precedent clearly establishes that the district court must make [*Graham*] findings before invalidating a patent for obviousness.” *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 663 (Fed. Cir. 2000). “Throughout the obviousness determination, a patent retains its statutory presumption of validity, see 35 U.S.C. § 282, and the movant retains the burden to show the invalidity of the claims by clear and convincing evidence as to underlying facts.” *McGinley*, 262 F.3d at 1349 (*quoting Rockwell Int’l. Corp. v. United States*, 147 F.3d 1358, 1364 (Fed.Cir.1998)).

“The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art.” *In re Dow Chem. Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988). “Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant’s disclosure.” *Merck & Co. v. Danbury Pharmacal, Inc.*, 694 F. Supp. 1, 29 (D. Del. 1988), *aff’d*, 873 F.2d 1418 (Fed. Cir. 1989).

“35 U.S.C. § 103 requires that obviousness be determined with respect to the invention as a whole.” *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985). This is essential for “virtually all [inventions] are combinations of old elements.” *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (*citing Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984)). “Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each

individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *In re Kotzab*, 217 F.3d 1365, 1369-70 (Fed. Cir. 2000) (citing *In re Rouffet*, 149 F.3d at 1357).

Just because an invention is simple does not mean that it is obvious under 35 U.S.C. § 103. “[S]imple and obvious are not synonymous terms.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 906 (Fed. Cir.), *cert. denied*, 474 U.S. 843 (1985). “[T]he simplicity of new inventions is oftentimes the very thing that is not obvious before they are made.” *Application of Van Wanderham*, 378 F.2d 981, 987 (CCPA 1967). “Indeed, simplicity may even be some evidence of invention.” *Id.* “The fact that the invention seems simple after it is made is not determinative of the question of obviousness.” *Id.* In fact, “[w]hen the art in question is relatively simple, as is the case here, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously.” *McGinley*, 262 F.3d at 1351; *Ruiz*, 234 F.3d at 664.

a. Use Of Hindsight Is Impermissible

The Federal Circuit has emphasized that the pertinent obviousness inquiry takes place at the time of the invention. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). *Dembiczak* states:

Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.

Id. at 999 (citations omitted). *See also Ecolchem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000), *cert. denied*, 121 S. Ct. 1607 (2001). Thus, the use of hindsight in an obviousness analysis is always impermissible.

The Federal Circuit has singled out the danger involved in using hindsight to combine prior art references. As *Ecolochem* states, there must be a showing that there was a suggestion to combine the references at the time of invention:

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine prior art references. See *Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q. 2d. (BNA) at 16-17. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.” *Id.*

Id. at 1371-72. See also *In re Rouffet*, 149 F.3d at 1358 (observing that “the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness”); *In re Kotzab*, 217 F.3d at 1369 (“Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one ‘to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher.’”).

“The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some ‘teaching, suggestion or reason’ to combine cited references.” *McGinley*, 262 F.3d at 1351. Therefore, “[i]n order to prevent a hindsight-based obviousness analysis, [the Federal Circuit has] clearly established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references.” *Ruiz*, 234 F.3d at 664. “The absence of such a suggestion to combine is dispositive in an obviousness determination.” *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579 (Fed. Cir. 1997).

Accordingly, as noted above, “[a] critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.” *In re Kotzab*, 217 F.3d at 1369. Thus “[t]he decision of obviousness *vel non* is made not from the viewpoint of the inventor, but from the viewpoint of a person of ordinary skill in the field of the invention.” *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 956 (Fed. Cir. 1997). “The purpose is to assure an appropriate perspective of the decisionmaker, and to focus on conditions as they existed when the invention was made.” *Id.* As the Federal Circuit held in *Standard Oil Co. v. American Cyanamid Co.*, 774 F.2d 448 (Fed. Cir. 1985):

The issue of obviousness is determined entirely with reference to a *hypothetical* “person having ordinary skill in the art.” It is only that hypothetical person who is presumed to be aware of all the pertinent prior art. The actual inventor’s skill is irrelevant to the inquiry, and this is for a very important reason. The statutory emphasis is on a person of *ordinary* skill. Inventors, as a class, according to the concepts underlying the Constitution and the statutes that have created the patent system, possess something -- call it what you will -- which sets them apart from the workers of *ordinary* skill, and one should not go about determining obviousness under § 103 by inquiring into what *patentees* (i.e. inventors) would have known or would likely have done, faced with the revelations of references. A person of ordinary skill in the art is also presumed to be one who thinks along the line of conventional wisdom in the art and is not one who undertakes to innovate, whether by patient, and often expensive systematic research or by extraordinary insights, it makes no difference which.

Id. at 454 (emphasis in original). “The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.” *Interconnect Planning*, 774 F.2d at 1138.

b. Prior Art Elements Cannot be Combined Absent Some Teaching in the Prior Art to Combine the Elements

In *Arkie Lures*, 119 F.3d at 957-58, the Federal Circuit warned district courts to avoid “the tempting but forbidden zone of hindsight,” and stated:

It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements. Indeed, the years of use of salty bait and of plastic lures, without combining their properties, weighs on the side of unobviousness of the combination.

Similarly, in *Smiths Indus. Med Sys. Inc. v. Vital Signs Inc.*, 183 F.3d 1347, 1356-57 (Fed. Cir. 1999), the Federal Circuit reversed because of the lack of clear and convincing evidence of the suggestion to combine:

That knowledge *may* have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge . . . [citations omitted]. Vital Signs thus failed in this case to establish why one of ordinary skill would have found it obvious to combine the numerous claim limitations in a particular way to achieve the ‘941 invention.

The suggestion to combine may come from the nature of the problem to be solved, but the Court may not define the problem “in terms of its solution.” As the Federal Circuit stated in *Ecolchem*:

Although the suggestion to combine references may flow from the nature of the problem . . . defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.

227 F.3d at 1372 (citations omitted). Although the suggestion, teaching or motivation may come from a number of sources:

The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular . . . [citation omitted]. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence.”

Dembiczak, 175 F.3d at 999. There must be an explanation of “the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.” *Rouffet*, 149 F.3d at 1359; *Kotzab*, 217 F.3d at 1370.

Where the prior art does not specifically teach or suggest combining prior art to make the claimed invention, it is rare that such a suggestion can be supplied simply by the level of skill in the art. In *Al-Site, Inc. v. VSI Int’l*, 174 F.3d 1308, 1324 (Fed. Cir. 1999), the Court stated:

Rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment . . . Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies the primary guarantee of objectivity in the process.

See also Ecolochem, 227 F.3d at 1372; *Dembiczak*, 175 F.3d at 1000; *Kotzab*, 217 F.3d at 1371.

Motivation to combine requires an appreciation of the desirability of making the combination. It is not measured by the feasibility of making the combination. *Winner Int’l*, 202 F.3d at 1349. *See also Ecolochem*, 227 F.3d at 1372 (“the question is whether there is something in the prior art as a whole to suggest the desirability . . . of making the combination.”).

c. Teaching Away

The Federal Circuit stated in *Tec Air, Inc. v. Denso Mfg. Michigan Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999) (citations omitted):

To establish a *prima facie* case of obviousness, [the defendant] must show “some objective teaching in the prior art that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” . . . There is no suggestion to combine, however, if a reference teaches away from its combination with another source. . . . “A reference may be said to teach away when a person or ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant.” . . . If when combined, the references

“would produce a seemingly inoperative device,” then they teach away from their combination.

d. “Obvious To Try” Is Not The Standard; Rather, The Suggested Combination Must Have A Reasonable Likelihood of Success

The Federal Circuit and this Court “have consistently held that ‘obvious to try’ is not to be equated with obviousness under 35 U.S.C. § 103.” *Gillette Co. v. S.C. Johnson & Son, Inc.*, 919 F.2d 720, 725 (Fed. Cir. 1990). “Thus, the governing standard is emphatically not whether a particular method or process leading to an invention would be ‘obvious to try,’ but whether such an experiment would have been expected to succeed.” *Merck & Co. v. Danbury Pharmacal, Inc.*, 694 F. Supp. 1, 29 (D. Del. 1988).

The controlling case law requires proof that at the relevant time there was a suggestion that the combination would be reasonably likely to succeed. In *Smith Indus.*, 183 F.3d at 1356, the Federal Circuit reversed an obviousness determination stating:

[T]he relevant inquiry is whether there is a reason, suggestion or motivation in the prior art that would lead one of ordinary skill in the art to combine the references, and that would also suggest a reasonable likelihood of success.

* * *

Here, the district court summarily concluded that it would have been obvious to combine the claim limitations found in the ‘941 invention from the prior art . . . However, the court never identified the source of the various claim limitations in the prior art, much less the motivation, teaching or suggestion to combine them.

See also Life Techs. Inc v. Clontech Labs. Inc., 224 F.3d 1320, 1326 (Fed. Cir. 2000) (“For the Johnson article to render the claimed invention obvious, there must have been, at the time the invention was made, a reasonable expectation of success in applying Johnson’s teachings”); *In re Dow Chem. Co.*, 837 F.2d at 473 (“Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant’s disclosure.”).

As this Court has stated:

Evidence that it would have been ‘obvious to try’ a given invention is insufficient to support a finding of obviousness. *In re O’Farrell*, 853 F.2d 894, 903 (Fed. Cir. 1988). An ‘obvious to try’ situation exists when a general disclosure may pique the scientist’s curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result. *In re Eli Lilly & Co.*, 902 F.2d 943, 945 (Fed. Cir. 1990).

LNP Eng’g Plastics, Inc. v. Miller Waste Mills, Inc., 77 F. Supp. 2d 514, 556 (D. Del. 1999).

e. Objective Indicia of Nonobviousness Must be Considered

Objective indicia or secondary considerations of nonobviousness must be considered prior to reaching a conclusion of nonobviousness. *Ashland Oil, Inc. v. Delta Resins & Refractories*, 776 F.2d 281, 306 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986). These secondary considerations include “commercial success, long-felt but unresolved need, failure of others, copying and unexpected results.” *Ruiz*, 234 F.3d at 662-63; *Tec Air*, 192 F.3d at 1361. These indicia “are often [the] most probative and determinative of the ultimate conclusion of obviousness or nonobviousness.” *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573 (Fed. Cir. 1996). *See also Tec Air*, 192 F.3d at 1361 (sales figures alone are evidence of commercial success sufficient to rebut *prima facie* obviousness).

“In *Graham* the Supreme Court explained that the public and commercial response to an invention is a factor to be considered in determining obviousness, and is entitled to fair weight. . . . The so-called ‘secondary considerations’ provide evidence of how the patented device is viewed by the interested public: not the inventor, but persons concerned with the product in the objective arena of the marketplace.” *Arkie Lures*, 119 F.3d at 957.

“When a patentee asserts that commercial success supports its contention of nonobviousness, there must of course be a sufficient relationship between the commercial success

and the patented invention. The term ‘nexus’ is often used, in this context, to designate a legally and factually sufficient connection between the proven success and the patented invention, such that the objective evidence should be considered in the determination of nonobviousness. The burden of proof as to this connection or nexus resides with the patentee.” *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir.), *cert. denied*, 488 U.S. 956 (1988).

“In meeting its burden of proof, the patentee in the first instance bears the burden of coming forward with evidence sufficient to constitute a prima facie case of the requisite nexus. . . . A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent.” *Id.*; *Tec Air*, 192 F.3d at 1361.

“When the patentee has presented a prima facie case of nexus, the burden of coming forward with evidence in rebuttal shifts to the challenger. . . . It is thus the task of the challenger to adduce evidence to show that the commercial success was due to extraneous factors other than the patented invention, such as advertising, superior workmanship, etc.” *Id.* at 1393.

“[W]hen differences that may appear technologically minor nonetheless have a practical impact, particularly in a crowded field, the decision maker must consider the obviousness of the new structure in this light. Such objective indicia as commercial success, or filling an existing need, illuminate the technological and commercial environment of the inventor, and aid in understanding the state of the art at the time the invention was made.” *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1273 (Fed. Cir. 1991).

“[L]ong-felt need is analyzed as of the date or of an articulated identified problem and evidence of efforts to solve that problem.” *Texas Instr., Inc. v. United States Int’l Trade Comm’n*, 988 F.2d 1165, 1178 (Fed. Cir. 1993). “Nonobviousness is suggested by the failure of others to ‘find a solution to the problem which the patent[s] in question purport[] to solve. Such

evidence shows indirectly the presence of a significant defect [in the prior art]. . . .” *Symbol Techs., Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1578-79 (Fed. Cir. 1991).

f. Section 103(c) Art May Not Be Considered

35 U.S.C. § 103(c) states:

Patentability shall not be negated by the manner in which the invention was made. Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

“A purpose of the 1984 amendment to Section 103 [35 U.S.C. § 103(c)] was to overturn a line of cases under which a prior invention which was not public could be treated under 102(g) as prior art for purposes of Section 103 with respect to a later invention made by another employee of the same organization.” *Kimberly-Clark Corp. v. Procter & Gamble Distrib. Co.*, 973 F.2d 911, 917 (Fed. Cir. 1992). “The practical consequence of these decisions was that research organizations were given an incentive to discourage information sharing and collaboration among their researchers, thus impeding research, because one inventor’s unpublished work might be prior art against another’s. Congress amended Section 103 to eliminate this problem and thereby to encourage team research.” *Id.*

Art excluded from consideration under 35 U.S.C. § 103(c) may not be introduced as evidence of the level of skill in the art. *Graco Children’s Prods., Inc. v. Century Prods. Co., Inc.*, 1996 WL 421966, *18 (E.D. Pa. 1996).

4. Validity Under § 112

a. Written Description

The first paragraph of 35 U.S.C. § 112 requires that the specification of a patent contain a written description of the invention. “[I]nvalidating a claim requires a showing by clear and convincing evidence that the written description requirement has not been satisfied.” *Invitrogen Corp. v. Clonotech Laboratories, Inc.*, 429 F.3d 1052, 1072 (Fed. Cir. 2005). “The written description requirement does not require the applicant to ‘describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.’” *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000). The requirement “ensures that, as of the filing date, the inventor conveyed with reasonable clarity to those of skill in the art that he was in possession of the subject matter of the claims.” *Id.* The Federal Circuit “has continued to apply the rule that disclosure of a species may be sufficient written description support for a later claimed genus including that species.” *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1124 (Fed. Cir. 2004).

“[C]ompliance with the written description requirement is a question of fact.” *Invitrogen Corp.*, 429 F.3d at 1072. “In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide in haec verba support for the claimed subject matter at issue.” *Crown Operations Int’l, Ltd v. Solutia, Inc.*, 289 F.3d 1367, 1376 (Fed. Cir. 2002). An invention need not have been reduced to practice to have been adequately described. *Falko-Gunter Falkner v. Inglis*, 448 F.3d 1357, 1366 (Fed. Cir. 2006). The “requirement is satisfied by the patentee’s disclosure of such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.” *Id.* Examples are not necessary for a patent’s disclosure to be adequate, nor is the length of the description relevant provided it communicates possession to one of skill in the art. *See id.*, (quoting *In re Hayes Microcomputer*

Prods., Inc. Patent Litig., 982 F.2d 1527, 1534 (Fed.Cir.1992) (“[T]he adequacy of the description of an invention depends on its content in relation to the particular invention, not its length.”)

b. Enablement

§ 112 also requires that the specification describe the invention “in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.” 35 U.S.C. § 112. Whether a patent specification is sufficiently enabling is a question of law based on underlying factual inquiries. *Falkner v. Ingils*, 448 F.3d 1357, 1363 (Fed. Cir. 2006). Invalidating a claim requires a showing by clear and convincing evidence that the enablement requirement is not satisfied. *Koito Mfg. Co. v. Turn-Key-Tech, LLC*, 381 F.3d 1142, 1156 (Fed. Cir. 2004).

Although a specification must enable the full scope of the subject matter claimed, it need not enable a commercially viable embodiment to have met that standard. *See CFMT, Inc. v. Yieldup Int’l Corp.*, 349 F.3d 1333, 1338 (Fed. Cir. 2003) (“Enablement does not require an inventor to meet lofty standards for success in the commercial marketplace. Title 35 does not require that a patent disclosure enable one of ordinary skill in the art to make and use a perfected, commercially viable embodiment absent a claim limitation to that effect.”) The full scope of the claimed system is defined *by the claim terms* as construed by the Court. *See National Recovery Techs., Inc. v. Magnetic Separation Sys., Inc.*, 166 F.3d 1190, 1195-96 (Fed. Cir. 1999); *AK Steel Corp. v. Sollac and Ugine*, 344 F.3d 1234, 1243-44 (Fed. Cir. 2003). Thus, a proper enablement analysis consists of comparing the claims as construed to the specification to see if they are enabled. *AK Steel*, 344 F.3d at 1243-44.

“[W]hether undue experimentation is needed is not a single, simple factual determination, but rather is a conclusion reached by weighing many factual considerations.” *Warner-Lambert Co., v. Teva Pharms., U.S.A., Inc.*, 418 F.3d 1326, 1337 (Fed. Cir. 2005). The

factual considerations that may be weighed include “(1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims.” *Id.* (quoting *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)).

c. Indefiniteness

Section 112 ¶2 requires that “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112 (emphasis added). Whether a claim meets this statutory requirement or is invalid as “indefinite” is a question of law. *See Aero Prods. Int’l, Inc. v. Intex Recreation Corp.*, 466 F.3d 1000, 1015 (Fed. Cir. 2006). “If a claim is amenable to construction, ‘even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree,’ the claim is not indefinite.” *Id.* at 1016 (quoting *Exxon Res. & Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed.Cir.2001)).

B. INEQUITABLE CONDUCT

1. General Requirements to Show Inequitable Conduct

“Patent applicants and those substantively involved in the preparation or prosecution of a patent application owe a ‘duty of candor and good faith’ to the PTO,” and a breach of this duty may render the issued patent unenforceable for inequitable conduct. *M. Eagles Tool Warehouse, Inc. v. Fisher Tooling Co.*, 439 F.3d 1335, 1339 (Fed. Cir. 2006) (citations omitted). “To prove that a patent is unenforceable due to inequitable conduct, the alleged infringer must provide clear and convincing evidence of (1) affirmative misrepresentations of a material fact, failure to disclose material information, or submission of false material information and (2) an intent to deceive.” *Impax Labs., Inc. v. Aventis Pharms., Inc.*, 488 F. 3d 1366, 1374 (Fed. Cir. 2006). If the accused

infringer has proven “threshold level[s]” of both materiality and intent, each by clear and convincing evidence, the trial court then balances materiality and intent to determine whether the conduct was inequitable, and the entire patent thus unenforceable. *Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, No. 05-1396, 2006 WL 3792689 at *9 (Fed. Cir. Dec. 26, 2006). “It was to mitigate the ‘plague’ whereby every patentee’s imperfections were promoted to ‘inequitable conduct’ that [the Federal Circuit] reaffirmed that both materiality and culpable intent must be established.” *Allied Colloids, Inc. v. Am. Cyanamid Co.*, 64 F.3d 1570, 1578 (Fed. Cir. 1995).

2. Materiality

To determine what constitutes material information, courts may look to the definition of materiality provided by 37 C.F.R. § 1.56, which sets forth the PTO’s definition of materiality, the “reasonable examiner” standard, or any of the older standards for materiality. *See Impax*, 239 F.3d at 1374 (*quoting Digital Control, Inc. v. Charles Mach. Works*, 437 F.3d 1309, 1316 (Fed. Cir. 2006)).

Under the “reasonable examiner” standard, information is material if “a reasonable examiner would have considered such prior art important in deciding whether to allow the parent application.” *Id.* (*quoting Digital Control*, 437 F.3d at 1316). The “older standards” include:

(1) the objective “but for” standard, “where the misrepresentation was so material that the patent should not have issued,” (2) the subjective “but for” test, “where the misrepresentation actually caused the examiner to approve the patent application when he would not otherwise have done so,” and (3) the “but it may have” standard, “where the misrepresentation may have influenced the patent examiner in the course of prosecution.”

Id. (*quoting Digital Control*, 437 F.3d at 1316).

Under Rule 1.56:

Information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability

37 C.F.R. § 1.56. Importantly, this provision was substantially narrowed in 1992 in response to the widespread perception that the defense of inequitable conduct had become an abusive allegation.

As the Federal Circuit stated:

the habit of charging inequitable conduct in almost every major patent case has become an absolute plague. Reputable lawyers seem to feel compelled to make the charge against other reputable lawyers on the slenderest grounds, to represent their client's interests adequately, perhaps. They get anywhere with the accusation in but a small percentage of the cases, but such charges are not inconsequential on that account. They destroy the respect for one another's integrity, for being fellow members of an honorable profession, that used to make the bar a valuable help to the courts in making a sound disposition of their cases, and to sustain the good name of the bar itself. A patent litigant should be made to feel, therefore, that an unsupported charge of "inequitable conduct in the Patent Office" is a negative contribution to the rightful administration of justice.

Burlington Indus., Inc. v. Dayco Corp., 849 F.2d 1418, 1422 (Fed. Cir. 1988) (emphasis added).

As the first sentence of Rule 1.56 makes clear, however, information cannot be material for purposes of inequitable conduct if it is "cumulative to information already of record or being made of record in the application." See also *Digital Control*, 437 F.3d at 1319 ("a withheld

otherwise material prior art reference is *not* material for the purposes of inequitable conduct if it is merely cumulative to that information considered by the examiner”) (emphasis original). Whether a reference is cumulative to others before the examiner depends on the teachings of the references, which are questions of fact. *Id.*

Conduct during the prosecution of a related application is not material to the prosecution of a patent’s claims unless the related application deals with the same subject matter as the claims. *See Baxter Int’l v. McGaw, Inc.*, 149 F.3d 1321, 1332 (Fed. Cir. 1998) (“[W]here the claims are subsequently separated from those tainted by inequitable conduct through a divisional application, and where the issued claims have no relation to the omitted prior art, the patent issued from the divisional application will not also be unenforceable due to inequitable conduct committed in the parent application.”). Likewise, prior litigation involving an ancestor application is not per se material to the prosecution of a later divisional application. *See Kothmann Enters., Inc. v. Trinity Indus., Inc.*, 455 F.Supp.2d 608, 626 (S.D. Tex. 2006) (“In applying the MPEP, the [Federal Circuit] did not merely examine whether the patent-in-suit and the patent-in-prosecution involved similar claimed inventions, but specifically analyzed the claim terms at issue in both the litigation and the patent prosecution to see whether and how the litigation affected the patentability of the invention claimed in the application.”).

3. **Intent**

To establish inequitable conduct, an accused infringer must also prove by clear and convincing evidence that the material conduct was performed with the deliberate intent to mislead the PTO. *Manville Sales Corp. v. Paramount Sys., Inc.*, 917 F.2d 544, 552 (Fed. Cir. 1990) (“‘Materiality does not presume intent, which is a separate and essential component of inequitable conduct.’ Appellants must show by clear and convincing evidence that Manville acted inequitably

by *intending to mislead or deceive* the PTO.”) (*quoting Allen Organ Co. v. Kimball Int’l, Inc.*, 839 F.2d 1556, 1567 (Fed. Cir. 1988)) (emphasis in original).

A finding of “gross negligence” is not sufficient to meet the threshold standard of intent. *Eli Lilly & Co.*, 2006 WL 3792689 at *9 (*citing Kingsdown Med. Consultants*, 863 F.2d at 876). When examining intent, “[t]he simple absence of a reference from the prosecution record does not prove deceptive intent; there must be evidence sufficient to show, clearly and convincingly, the intent to withhold material information in order to deceive or mislead the examiner.” *Jazz Photo Corp. v. U.S. Int’l Trade Comm’n*, 264 F.3d 1094, 1110 (Fed. Cir. 2001). The Federal Circuit has made clear that “‘intent to deceive can not be inferred solely from the fact that information was not disclosed; there must be a factual basis for a finding of deceptive intent.’” *Catalina Lighting, Inc. v. Lamps Plus, Inc.* 295 F.3d 1277, 1289 (Fed. Cir. 2002) (*quoting Herbert v. Lisle Corp.*, 99 F.3d 1109, 1116 (Fed Cir. 1996)). Where the reasons given for the withholding are plausible, intent to deceive cannot be inferred simply from the decision to withhold the reference. *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1367 (Fed. Cir. 2003). Rather, “the record must contain clear and convincing evidence that the applicant made a deliberate decision to withhold a known material reference. Beyond that, the applicant must have withheld the material subject matter with the intent to deceive.” *Eli Lilly & Co.*, 2006 WL 3792689 at *9.

4. Balancing

If threshold levels of both materiality and intent have been established by clear and convincing evidence, the Court must weigh the facts, including *all* evidence of the patentee’s good faith, to determine the ultimate question of inequitable conduct and whether that conduct renders the patent unenforceable. *Id.*; *Kingsdown Med. Consultants v. Hollister, Inc.*, 863 F.2d 867, 876 (Fed. Cir. 1988) (requiring consideration of any evidence of patentee’s good faith).

In weighing materiality and intent, the more material the omission or the misrepresentation, the lower the level of intent required to establish inequitable conduct, and vice versa. *Monon Corp. v. Stoughton Trailers, Inc.*, 239 F.3d 1253, 1261 (Fed. Cir. 2001). However, if either materiality or intent is not found, then no further analysis need be performed, and unenforceability must be denied. *Id.*

C. COMPETITION COUNTERCLAIMS

Illumina has put forward a number of counterclaims, all of which are based on alleged anticompetitive conduct by Affymetrix, including claims under the Sherman Act and California Business & Professional Code, § 17200, and the common law tort of Intentional Interference with Actual and Prospective Economic Advantage. Illumina also claims that relief should be barred under the equitable doctrine of unclean hands.

The Court has already bifurcated Illumina's antitrust counterclaims under the Sherman Act from the other issues to a later date. (Order of February 17, 2006 bifurcating Sherman Act counterclaims). As such, to the extent that Illumina's counterclaims depend upon its antitrust allegations, those counterclaims cannot be fully adjudicated until the Sherman Act issues are fully litigated.

1. Intentional Interference With Actual & Prospective Economic Advantage

Illumina's alleges the tort of intentional interference with actual and prospective economic advantage under California law. To prevail in a claim of intentional interference with actual and prospective economic advantage brought under California law, a plaintiff must show:

(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.

Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1153 (2003) (citing *Westside Center Assoc. v. Safeway Stores*, 23 Inc. 42 Cal. App. 4th 507, 52 1-22 (1996)).

As the California Supreme Court made clear, “the third element also requires a plaintiff to plead [and prove] intentional *wrongful* acts on the part of the defendant designed to disrupt the relationship.” *Korea Supply Co.*, 29 Cal. 4th at 1154 (emphasis in original). That is, “a plaintiff seeking to recover damages for interference with prospective economic advantage must plead and prove as part of its case-in-chief that the defendant’s conduct was ‘wrongful by some legal measure other than the fact of the interference itself.’” *Id.* at 1153 (quoting *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* 11 Cal. 4th 376, 393 (1995)).

“An act is not independently wrongful merely because defendant acted with an improper motive.” Rather, a defendant’s conduct is “independently wrongful” only if it is “unlawful, that is, proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” *Korea Supply Co.*, 29 Cal. 4th at 1159. There is also an intent requirement. A plaintiff must prove “that the defendant acted either with the desire to interfere or the knowledge that interference was certain or substantially certain to occur as a result of its action.” *Id.* at 1154, 1164-65.

The purpose of the “independent wrongfulness” requirement is to ensure that the tort of interference with prospective economic advantage is not applied to lawful business competition. *See, e.g., Korea Supply Co.*, 29 Cal.4th at 1158 (“[T]he tort of intentional interference with prospective economic advantage is not intended to punish individuals or commercial entities for their choice of commercial relationships or their pursuit of commercial objectives”); *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* 11 Cal. 4th 376, 393 (1995) (“[P]erhaps the most significant privilege for interference with prospective economic advantage is free competition [I]n a sense, all vendees are potential buyers of the products and services of

all sellers in a given line, and success goes to him who is able to induce potential customers not to deal with a competitor.”) (*quoting Buckaloo v. Johnson*, 14 Cal. 3rd 815, 828 (1975)).

The plaintiff must prove more than general “interference with the market”; to recover damages, the plaintiff must show “an existing relationship with an identifiable buyer.” *Westside Center Associates v. Safeway Stores 23, Inc.* 42 Cal. App. 4th 507, 527 (1996); *see also Korea Supply Co.*, 29 Cal. 4th at 1165 (stating that “only plaintiffs that can demonstrate actual disruption of their economic relationship will be able to state a claim for this tort.”). Further, “[i]t is hornbook law that an actionable misrepresentation must be made about past or existing facts; statements regarding future events are merely deemed opinions.” *San Francisco Design Center Assoc. v. Portman Co.*, 41 Cal. App. 4th 29, 43-44 (1995). Also, “comments about a competitor’s own project, even though misleading, are not sufficient to avoid the competitor’s privilege.” *Id.*

Where, as here, the claimant contends that the “independently wrongful” act is the alleged monopolization or attempted monopolization of the relevant market, the claimant must prove a claim for monopolization or attempted monopolization under Section 2 of the Sherman Act. A monopolization claim under section 2 of the Sherman Act requires a plaintiff to prove “(1) possession of monopoly power in the relevant market, (2) willful acquisition or maintenance of that power, and causal ‘antitrust injury.’” *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 736 (9th Cir. 1987). An attempted monopolization claim requires “(1) the specific intent to control prices or destroy competition in the relevant market, (2) predatory or anti-competitive conduct directed to accomplishing the unlawful purpose, and (3) a dangerous probability of success.” *Id.*

“To prove that the defendant has power in the market, the plaintiff must prove both the relevant market and that the defendant has power within the market.” *Carter v. Veriflex, Inc.*, 101 F. Supp. 2d 1261, 1266 (C.D. Cal. 2000) (*citing Oltz v. St. Peter’s Comm’n Hosp.*, 861 F.2d 1440, 1445 (9th Cir. 1988)). “To demonstrate market power circumstantially, a plaintiff must: (1)

define the relevant market, (2) show that the defendant owns a dominant share of that market, and (3) show there are significant barriers to entry and show that existing competitors lack the capacity to increase their output in the short run.” *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995).

“Plaintiffs have the burden of defining the relevant market.” *Queen City Pizza, Inc. v. Dominio’s Pizza, Inc.*, 124 F.3d 430 436 (3d Cir. 1997) (upholding dismissal of complaint because plaintiff’s failed to plead a relevant market) (citing *Pastore v. Bell Telephone Co. of Pennsylvania*, 24 F.3d 508, 512 (3d Cir. 1994). ““The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.”” *Id.* (quoting *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 325 (1962)). Factors to consider include “such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product’s particular characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.” *Brown Shoe*, 370 U.S. at 325.

“A mere showing of substantial or even dominant market share alone cannot establish market power sufficient to carry out a predatory scheme. The plaintiff must show that new rivals are barred from entering the market and show that existing competitors lack the capacity to expand their output to challenge the predator’s high price.” *Rebel Oil*, 51 F.3d at 1439 (citation omitted). “The main sources of entry barriers are: (1) legal license requirements; (2) control of an essential or superior resource; 93) entrenched buyer preference; (4) capital market evaluations imposing higher capital costs on new entrants; and, in some situations, (5) economies of scale.” *Id.* (citation omitted). “To justify a finding that a defendant has the power to control prices, entry barriers must be significant – they must be capable of constraining the normal operation of the market to the extent that the problem is unlikely to be self-correcting.” *Id.* (citation omitted).

“Market power cannot be inferred solely from the existence of entry barriers and a dominant market share.” *Id.* at 1441. An existing competitor’s capacity to expand belies the existence of market power. “Prior expansion by competitors would suggest that the defendant during that expansion lacked the market power to control marketwide output in the first place.” *Id.* (citation omitted). “To pose a threat of market monopolization, one firm *alone* must have the power to control market output and exclude competition.” *Id.* (emphasis in original).

2. **Unfair Business Practices Under § 17200 Of The California Business & Professional Code**

California’s Business and Professions Code section 17200 *et seq.* – often referred to as the Unfair Competition Law or “UCL” – “prohibits unfair competition, including unlawful, unfair, and fraudulent business acts.” *Korea Supply Co.*, 29 Cal. 4th at 1143. “A UCL action is equitable in nature; damages cannot be recovered.” *Id.* at 1144. There is no right to a jury trial on a UCL claim. *Hodge v. Superior Court*, 145 Cal. App. 4th 278, 284-87.

On November 3, 2004, Proposition 64 (a voter-approved measure) took effect, amending certain aspects of the UCL, including the standing provisions. *See Californians For Disability Rights v. Mervyn’s, Inc.*, 39 Cal. 4th 223, 227-28 (2006). Under the new standing provisions of the UCL, only a person “who has suffered injury in fact and has lost money or property as a result of unfair competition” has standing to sue. *Id.* at 228. The new standing provisions apply in all cases, including those cases pending at the time Proposition 64 took effect. *Id.* at 232-33. Furthermore, “standing must exist at all times until judgment is entered and not just on the date the complaint is filed. ‘Contentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding.’” *Id.* at 232-33 (*quoting Common Cause v. Board of Supervisors*, 49 Cal. 3d 432, 438 (1989)).

The UCL “establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair, or fraudulent.” *Schnall v. Hertz Corp.*, 78 Cal. App. 4th 1144, 1153 (2000). “Unlawful” conduct is self-defining. “By proscribing ‘any unlawful’ business practice, ‘section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices’ that the unfair competition law makes independently actionable.” *Cel-Tech Communic’ns, Inc. v. Los Angeles Cellular Tel. Co.* 20 Cal. 4th 163, 187 (1999) (quoting *State Farm Fire & Casualty Co. v. Superior Court* 45 Cal.App.4th 1093, 1103 (1996)).

The “unfair” prong of the UCL is likewise circumscribed, particularly in defining what constitutes “unfair” competition in cases brought by business competitors. In *Cel-Tech Communications.*, 20 Cal. 4th at 187, the California Supreme Court defined the word “unfair” in the case of a claim brought by a competitor as follows:

When a plaintiff who claims to have suffered an injury from a direct competitor’s unfair act or practice invokes section 17200, the word ‘unfair’ in that section means *conduct that threatens an incipient violation of an antitrust law*, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly harms the competition.

(emphasis added).

The California Supreme Court emphasized that “injury to a competitor is not equivalent to injury to competition; only the latter is the proper focus of antitrust laws.” *Id.* at 186. To state a claim under the “unfair” prong of the UCL, a plaintiff must necessarily prove “market power,” the legal contours and required proof of which are discussed in Part C.1 above. *See, e.g., Carter*, 101 F. Supp. 2d at 1270 (stating that “in light of the Court’s findings under the Sherman Act, the Court finds that [the counterclaimant] has failed to produce evidence to support its California unfair competition claim.”); *In re Abbott Laboratories Norvir Anti-Trust Litig.*, 442 F.

Supp. 2d 800, 813 (N.D. Cal. 2006) (stating that if the federal antitrust claim fails, then the claims under Section 17200 would fail as well).

Under the “fraudulent” prong, a plaintiff must prove that “members of the public are likely to be deceived” by the alleged false or misleading statements. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992). “Furthermore, anecdotal evidence alone is insufficient to prove that the public is likely to be misled ... [and] to prevail, plaintiff must demonstrate by extrinsic evidence, such as consumer survey evidence, that the challenged statements tend to mislead consumers.” *Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1182 n. 8 (9th Cir. 2003).

Because the new standing provisions of the UCL allow claims to be brought only by a person who “has suffered injury in fact and has lost money or property as a result of unfair competition,” it follows that the new standing requirements “prevent *uninjured* private persons from suing for restitution on behalf of others.” *Californians For Disability Rights*, 39 Cal. 4th at 232. (emphasis in original). A person has “lost money or property” only if it has “an ownership interest in the money [or property] it seeks to recover from defendants” or has a “vested interest” in such money or property. *Korea Supply Co.*, 29 Cal. 4th at 1149.

The UCL as a whole is equitable in nature, generally allowing only injunctive relief and restitution. *See id.* at 179. It is well-settled that nonrestitutionary damages are not permitted under the UCL. *Korea Supply Co.*, 29 Cal. 4th at 1144-45. Moreover, although restitution under 17200 allows a court to “compel[] a UCL defendant to return money obtained through an unfair business practice to those persons in interest from whom the property was taken, that is, to persons who had an ownership interest in the property or those claiming through that person,” it does not allow the disgorgement of profits. *Korea Supply Co.*, 29 Cal.4th at 1152.

EXHIBIT 5

EXHIBIT 5

ILLUMINA'S STATEMENT OF THE CONTESTED ISSUES OF LAW¹

To the extent that any issues of fact set forth in Exhibit 3 of the Proposed Joint Pre-Trial Order may be considered issues of law, Illumina incorporates those portions of Exhibit 3 herein by reference. To the extent any of the issues of law set forth in this Exhibit 5 may be considered issues of fact, Illumina incorporates those portions of this Exhibit 5 in Exhibit 3.

A. Illumina Does Not Infringe the Patents-in-suit

1. An issue that remains to be litigated is whether Illumina directly infringed certain claims of the patents-in-suit, either literally or by equivalence, and whether Illumina indirectly infringed certain claims of the patents-in-suit either by contributing to infringement of the claims in the United States or by knowingly inducing others to infringe the claims of the patents-in-suit in the United States.

2. An infringement analysis entails two steps. First, the meaning and scope of the asserted patent claims is determined.² *Aquatex Industries, Inc. v. Techniche Solutions*, 419 F.3d 1374, 1380 (Fed. Cir. 2005). Second, the properly construed claims are compared to the accused product or process. *Id.* Claims may be limited to process steps disclosed in the patent specification if such steps are an essential part of the claimed invention. *Anderson Corp. v. Fiber Composites, LLC*, No. 05-1434, 06-1009, slip op. at 23 (Fed. Cir. Jan. 26, 2007).

¹ In addition to these issues, there remain issues to be litigated with respect to Count 7 of Illumina's Counterclaims, which was previously stayed by the Court. Additionally, the state of the law on various issues (e.g., obviousness, willful infringement) is currently unsettled, and Illumina reserves the right to incorporate any revised legal standards that are set forth by the United States Supreme Court or the Federal Circuit.

² Illumina set forth the legal issues and citations to the controlling law relating to claim construction in its *Markman* submissions. (D.I. 240). Issues of law reflected in Illumina's proposed jury instructions and the instructions jointly submitted by the parties are incorporated herein by reference.

1. Illumina Does Not Literally Infringe the Patents-in-Suit

3. Literal infringement can only be found if "every limitation recited in the claim appears in the accused device, i.e., when 'the properly construed claim reads on the accused device exactly.'" *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1331 (Fed. Cir. 2001).

4. A method or process consists of one or more operative steps, and, accordingly, "[i]t is well established that a patent for a method or process is not infringed unless all steps or stages of the claimed process are utilized." *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1318 (Fed. Cir. 2005).

5. A dependent claim is properly interpreted to include every limitation of the claim on which it depends. 35 U.S.C. § 112 ¶ 4. Thus, it is axiomatic that dependent claims cannot be found infringed unless the claims from which they depend have first been found to be infringed. *Finnigan Corp. v. International Trade Com'n*, 180 F.3d 1354, 1364 (Fed. Cir. 1999).

6. The phrase "consisting of" is a term of patent convention "that define[s] the scope of the claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim." *Conoco, Inc. v. Energy & Environmental Int'l, L.C.*, 460 F.3d 1349, 1360 (Fed. Cir. 2006). "The phrase consisting of signifies restriction and exclusion of unrecited steps or components." *Id.* This means that the claimed invention contains only what is expressly set forth in the claim and nothing else. *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1331 (Fed. Cir. 2004). Only elements that are unrelated and irrelevant to the claimed invention may be included. *Id.*

7. When a patent's preamble "recites essential structure that is important to the invention or necessary to give meaning to the claim," the preamble limits the scope of the claims. *Bicon, Inc. v. Straumann Comp.*, 441 F.3d 945, 952 (Fed. Cir. 2006). Therefore, when the "drafter chooses to use *both* the preamble and the body to define the subject matter of the

claimed invention, the invention so defined, and not some other, is the one the patent protects." *Id.*

2. The Doctrine of Equivalents Does Not Allow Affymetrix to Reach Illumina's Distinct Technology

8. If there is no literal infringement, the doctrine of equivalents may be considered only to the extent it is not precluded by the doctrine of prosecution history estoppel. *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 40 (1997). There are situations where application of the doctrine of equivalents is restricted. *Deputy Spine, Inc. v. Medtronic Sofamora Danek, Inc.*, 469 F.3d 1005, 1016-1017 (Fed. Cir. 2006). The "all elements" rule restricts the doctrine of equivalents by preventing its application when doing so would vitiate a claim limitation. *Id.* This rule balances the doctrine of equivalents with the principle that "claim language defines the scope of an invention and every limitation is material." *Id.* at 1016. Therefore, the "all elements" rule requires that "equivalence be assessed on a limitation-by-limitation basis rather than from the perspective of the invention as a whole, and that no limitation be read completely out of the claim." *Id.* at 1017 (citing *Freedman Seating Co. v. Am. Seating Co.*, 420 F.3d 1350, 1358 (Fed. Cir. 2005); *see also LG Electronics, Inc. v. Bizcom Electronics, Inc.*, 453 F.3d 1364, 1380, (Fed. Cir. 2006) ("The doctrine of equivalents operates under the 'all limitations rule,' whereby 'equivalence [is] assessed on a limitation-by-limitation basis, as opposed to from the perspective of the invention as a whole.'").

9. There are situations in which a patentee is not permitted to rely on the doctrine of equivalents. For example, prior art and prosecution history estoppel provide independent "policy oriented" limitations on the doctrine of equivalents. *Sextant Avionique, S.A. v. Analog Devices, Inc.*, 172 F.3d 817, 827 (Fed. Cir. 1999). Thus, where the accused infringer is merely practicing the prior art, he has a "complete defense" to a charge of infringement. *Id.*

10. A patentee also may not use the doctrine of equivalents to recapture that which he disavowed during prosecution of the patent. *Astrazeneca AB, Aktiebolaget Hassle, KBI-E, Inc. v. Mutual Pharmaceutical Co., Inc.*, 384 F.3d 1333, 1342 (Fed. Cir. 2004). Such a disavowal may be made in the specification, statements or arguments made to the examiner, or amendments made during prosecution. *Id.* at 1341-42; *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 740-41 (2002); *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 979 (Fed. Cir. 1999).

11. Amendment-based estoppel bars the application of the doctrine of equivalents. "When a patentee makes a narrowing amendment to a claim, the patent holder has the burden to demonstrate that the reason for the amendment was unrelated to patentability (e.g., to avoid prior art)." *Conoco, Inc.*, 460 F.3d at 1363 (citing *Warner-Jenkins Co.*, 520 U.S. at 33). "When the record lacks explanation for the amendment," there is a presumption "that the PTO had a substantial reason related to patentability for including the limiting element added by amendment." *Id.* This requires that courts "presume that the patentee surrendered all subject matter between the broader and narrower language. . . ." *Id.* (citing *Festo Corp.*, 535 U.S. at 739). This presumption cannot be rebutted unless the patentee shows "that at the time of the amendment one skilled in the art could not reasonably be expected to have drafted a claim that would have literally encompassed the alleged equivalent." *Id.* at 1363.

12. Argument-based estoppel also bars the application of the doctrine of equivalents when the prosecution history demonstrates the applicant's "clear and unmistakable surrender of subject matter." *Conoco, Inc.*, 460 F.3d at 1364. "The relevant inquiry is whether a competitor would reasonably believe that the applicant had surrendered the relevant subject matter." *Id.*

13. If none of these limitations bar the application of the doctrine of equivalents, "[a]n element in the accused product is equivalent to a claim limitation if the differences between the two are 'insubstantial' to one of ordinary skill in the art." *Eagle Comtronics Inc. v. Arrow Communication Labs, Inc.*, 305 F.3d 1303, 1315 (Fed. Cir. 2002). It is relevant whether the alleged equivalent element in the accused device "performs substantially the same function in substantially the same way to obtain the same result" as that of the missing element of the claimed invention. *Id.* at 1315 (citing *Graver Tank & Mfg, Co, v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950), *overruled-in-part on other grounds*, 535 U.S. 722 (2002)). However, "equivalency [must] be proven with 'particularized testimony and linking arguments.'" *Texas Instruments Inc. v. Cypress Semiconductor Corp.*, 90 F.3d 1558, 1566-67 (Fed. Cir. 1996) (citing *Lear Siegler, Inc. v. Sealy Mattress Co.*, 873 F.2d 1422 (Fed. Cir. 1991)). This ensures that the fact finder had an "analytical framework for making its decision," and that the reviewing court is assured "that the jury was fully presented with a basis for applying the doctrine of equivalents." *Id.* at 1567.

14. When an accused infringer's product or process is "so far changed in principle from a patented article that it performs the same or a similar function in a substantially different way" the accused product or process does not infringe the patented article. *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1351 (Fed. Cir. 2003). This "reverse doctrine of equivalents" is used to "restrict the claim and defeat the patentee's action for infringement," even if the accused infringer's product or process falls within the literal words of the claim. *Tate Access Floors, Inc. v. Interface Architectural Resources, Inc.*, 279 F.3d 1357, 1368 (Fed. Cir. 2002).

3. Illumina Did Not Contribute To Infringement of Affymetrix's Patents In the United States

15. Contributory infringement cannot occur in the absence of a direct infringement. *Joy Technologies, Inc. v. Flakt, Inc.*, 6 F.3d 770, 773 (Fed. Cir. 1993) ("Liability for either active inducement of infringement or for contributory infringement is dependent upon the existence of direct infringement."); *Met-Coil Sys. Corp. v. Korners Unlimited, Inc.*, 803 F.2d 684, 687 (Fed. Cir. 1986). Directly infringing activity, however, cannot occur outside the United States. 35 U.S.C. § 271(a); *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1374 (Fed. Cir. 1991) (finding no contributory infringement where there was no evidence the patented method was practiced in the United States).

16. The patentee must prove that the accused infringer (1) sold or offered to sell within the United States (2) a material component of a patented article or a material component used in practicing a patented process, (3) which item is not a staple article of commerce suitable for substantial noninfringing use, (4) with knowledge that the item sold, offered, or imported is especially made or especially adapted for use in an infringement of a patent, and (5) that such direct infringement did occur. 35 U.S.C. §271(c).

17. A patentee must show that an alleged contributory infringer knew that the combination for which its components were especially made was both patented and infringing. *Golden Blount, Inc. v. Robert H. Peterson Co.*, 365 F.3d 1054, 1060 (Fed. Cir. 2004); *Preemption Devices, Inc. v. Minnesota Min. & Mfg. Co.*, 803 F.2d 1170 (Fed. Cir. 1986). Contributory infringement cannot occur prior to the accused infringer's knowledge of the patent. *Trell v. Marlee Elec. Corp.*, 912 F.2d 1443 (Fed. Cir. 1990).

18. Furthermore, a patentee must show that the accused infringer's components have no substantial non-infringing uses in order to prove contributory infringement. *Golden Blount, Inc.*, 365 F.3d at 1060; *Alloc Inc. v. ITC*, 342 F.3d 1361, 1374 (Fed. Cir. 2003).

4. ILLUMINA DID NOT INDUCE INFRINGEMENT OF AFFYMETRIX'S PATENTS IN THE UNITED STATES

19. The patentee must show direct infringement in order for there to be inducement of infringement. *DSU Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1302 (Fed. Cir. 2006) ("the patentee always has the burden to show direct infringement for each instance of indirect infringement"); *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 774 (Fed. Cir. 1993). Directly infringing activity, however, cannot occur outside the United States. 35 U.S.C. § 271(a); *Joy Techs. Inc.*, 6 F.3d at 774.

20. The plaintiff has the burden of showing that the alleged infringer's actions induced infringing acts within the United States and that he knew his actions would induce actual infringement. *DSU Med. Corp.*, 471 F.3d at 1302. This means that the patent holder must prove that once the accused infringer knew of the patent, they actively and knowingly aided and abetted another's direct infringement. *Id.* at 1305. Thus, inducement requires evidence of culpable conduct, directed to encouraging another's infringement, not merely that the inducer had knowledge of the direct infringer's activities. *Id.* at 1306.

B. All Claims Of The Asserted Patents-in-Suit Are Invalid

21. An issue that remains to be litigated is whether the claims of the asserted patents are invalid. The claims of an issued patent may be shown to be invalid by clear and convincing evidence. *Iron Grip Barbell Co, Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1320 (Fed. Cir. 2004).

1. The Prior Art

22. A patent claim is invalid if "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent." 35 U.S.C. § 102(a).

23. A patent claim is invalid if "the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States." 35 U.S.C. § 102(b).

24. Under § 102(a), the knowledge or use will be prior art if it was: (1) a public use; (2) by someone other than the inventor; (3) before the inventor's date of invention; (4) in the United States. *Woodland Trust v. Flowertree Nursery, Inc.*, 148 F.3d 1368, 1370 (Fed. Cir. 1998); *Lockwood v. AM. Airlines, Inc.*, 107 F.3d 1565, 1570 (Fed. Cir. 1997). Under § 102(b), any prior public use or secret commercial use that occurred more than one year before the patent was filed qualifies as prior art. A prior publication, published before the established invention date or one year prior to the filing date, qualifies as prior art under §§ 102(a) or (b), respectively, if it was reasonably accessible to that portion of the public most likely to use it. *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989). The date a printed publication qualifies as prior art is the date it became available to the public. *Id.*

25. A prior patent that issued anywhere in the world before the invention of the patent in suit or more than one year before the application leading to the patent in suit qualifies as prior art. 35 U.S.C. § 102(a), (b); *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 78 F.3d 540, 545 (Fed. Cir. 1996); *In re Chu*, 66 F.3d 292, 296-97 (Fed. Cir. 1995); *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

26. "The key inquiry is whether or not a reference has been made 'publicly accessible.'" *In re Klopfenstein*, 380 F.3d 1345, 1348-1350 (Fed. Cir. 2004). This is the criterion

by which a prior art reference is judged for the purpose of § 102 (b). *Id.* The test for determining whether a reference was publicly accessible is whether "it has been disseminated or otherwise made available to the extent that persons interested and of ordinary skill in the subject matter or art [] exercising reasonable diligence can locate it...." *Massachusetts Institute of Technology v. AB Fortia*, 774 F.2d 1104, 1109 (Fed. Cir. 1985). This test is met when a reference is distributed or made available "at a conference where members of the interested public were 'told of the [reference's] existence and informed of its contents.'" *Ajinomoto Co. v. Archer-Daniels-Midland Co.*, 1998 WL 151411, at *37 (D. Del. 1998) (citing *MIT*, 774 F.2d at 1109).

27. Section 102(e)(2) provides that a patent claim is invalid by reason of anticipation if "the invention was described in...(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent." 35 U.S.C. § 102(e)(2).

28. A patent claim is invalid under § 102(g) "if a patentee's invention has been made by another, prior inventor who has not abandoned, suppressed, or concealed the invention." *Dow Chemical Co. v. Astro-Valcour, Inc.*, 267 F.3d 1334, 1339 (Fed. Cir. 2001). Generally, an invention was not abandoned, suppressed or concealed if the invention was made public, sold or offered for sale, or otherwise used for a commercial purpose. *Id.* at 1342-43.

29. Reduction to practice under § 102(g)(2) can be constructive or actual reduction to practice. *In re Katz*, 687 F.2d 450, 454 (CCPA 1982); *Roberts v. Sears, Roebuck & Co.*, 665 F. Supp. 671 (N.D. Ill. 1987) (rejecting plaintiff's argument that a constructive reduction is insufficient under § 102(g), "given the numerous cases in which constructive reduction was applied where patentability was at issue").

2. The Patents-in-Suit Are Invalid Because They Are Anticipated

30. An issue that remains to be litigated is whether the patents-in-suit are anticipated and/or obvious in view of the prior art. Anticipation is found when a reference, either expressly or inherently, discloses each and every limitation of the claimed invention. *Novo Nordisk Pharmaceuticals, Inc. v. Bio Technology General Corp.*, 424 F.3d 1347, 1354 (Fed. Cir. 2005); *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1349-1350 (Fed. Cir. 2002).

31. "It is well settled that a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it. Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." *In re Cruciferous Sprout Litigation*, 301 F.3d at 1349.

32. A reference need not enable its own invention to anticipate a later invention. Instead, "[t]o serve as an anticipating reference, the reference must enable that which it is asserted to anticipate." *Elan Pharms., Inc. v. Mayo Found. for Med. Educ. & Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003). It is not necessary that an invention disclosed in a publication have actually been made in order to satisfy the enablement requirement. *Id.* at 1055. Anticipation only requires that the prior art disclosure of the claimed invention be enabling to one of ordinary skill in the art. *Id.*

3. The Patents-In-Suit Are Not Entitled To the Priority Dates Affymetrix Claims

33. An issue that remains to be litigated is the appropriate or effective filing dates for the asserted claims. Claims in a patent application are entitled to the filing date of a previously filed application only if the earlier application sufficiently disclosed the subject matter of the later filed claims in the manner provided by the first paragraph of 35 U.S.C. § 112. 35 U.S.C. § 120. Therefore, to receive an earlier filing date, the previously filed application must fully

enable and describe the claimed invention. *Falko-Gunter Falkner v. Inglis*, 448 F.3d 1357, 1368 (Fed. Cir. 2006).

34. Under the first paragraph of 35 U.S.C. § 112, a patent's specification must describe the invention sufficiently to convey to a person of skill in the art that the patentee had possession of the claimed invention at the time of the application, i.e., that the patentee invented what is claimed. *LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005).

35. To prove a date of invention prior to the filing date of an application, Affymetrix must prove that the named inventors of the patents-in-suit invented the claimed subject matter of the patents at such earlier date. *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1576 (Fed. Cir. 1996). Affymetrix must prove either a prior reduction to practice or an earlier conception and due diligence until the invention was reduced to practice. *Id.* at 1577.

36. It is well established that, when a party seeks to prove conception via the oral testimony of a putative inventor, the party must proffer evidence corroborating that testimony. *Singh v. Brake*, 317 F.3d 1334, 1340-41 (Fed. Cir. 2003); *Price v. Symsek*, 988 F.2d 1187, 1194 (Fed. Cir. 1993) ("[a]n inventor's testimony, standing alone, is insufficient to prove conception — some form of corroboration must be shown"); *Invitrogen Corp. v. Clontech Labs, Inc.*, 429 F.3d 1052, 1065 (Fed. Cir. 2005) ("Indeed, because of the danger in post-hoc rationales by an inventor claiming priority, the court requires objective evidence to corroborate an inventor's testimony"). "[P]roof of an alleged inventor's conception and reduction to practice is a heavy one and requires full corroboration by other than the inventor's own self-serving testimony or records." *Aspex Eyewear, Inc. v. Revolution Eyewear Inc.*, No. CV99-1623LGB, 2001 WL

34852696, at * 5 (C.D. Cal., June 4, 2001) (quoting *Potter Instrument Co., Inc. v. Odec Computer Systems, Inc.*, 370 F.Supp. 198, 206 (D. R.I. 1974)).

37. A "rule of reason" is used to determine whether the corroborating evidence is sufficient. *Price v. Symsek*, 988 F.2d at 1341. This involves "an evaluation of all pertinent evidence. . . so that a sound determination of the credibility of the inventor's story may be reached." *Id.* at 1195.

38. Absent adequate corroboration, conception is not proven and the party is not entitled to the benefit of the earlier filing. *Invitrogen Corp.*, 429 F.3d at 1065.

4. The Asserted Claims Are Invalid As Obvious

39. A patent claim is invalid under § 103(a) even if it is not identically disclosed by the prior art if the differences between the subject matter claimed and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. 35 U.S.C. § 103 (a). The factual considerations underlying the legal determination of obviousness include the scope and content of the prior art, the differences between the prior art and the claims at issue, the level of ordinary skill in the pertinent art, and secondary considerations, including commercial success, long felt but unresolved needs, and failure of others. *Dystar Textilfarben GMBH & Co. v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966)).

40. One step in any obviousness analysis is to determine the scope and content of the prior art. The term "prior art" as used in § 103 refers at least to the statutory material named in 35 U.S.C. § 102. *Riverwood Int'l Corp. v. R.A. Jones & Co., Inc.*, 324 F.3d 1346, 1354 (Fed. Cir. 2003). Further, under § 103, a reference need not be enabled; it qualifies as prior art,

regardless, for whatever is disclosed therein. *Amgen Inc. v. Hoechst Marion Roussel Inc.*, 314 F.3d 1313, 1357 (Fed. Cir. 2003).

41. An explicit teaching that identifies and selects elements from different sources and states that they should be combined in the same way as the invention at issue, is rarely found in the prior art. *Id.* at 1385. Thus, the "motivation-suggestions-teaching" test is not so rigid as to "require[] an actual teaching to combine before concluding that one of ordinary skill in the art would know to combine references." *Alza Corp. v. Myaln Labs, Inc.*, 464 F.3d 1286, 1291 (Fed. Cir. 2006).

42. Under the Federal Circuit's non-rigid, motivation-suggestion-teaching test, "[t]he motivation to combine need not be found in the references sought to be combined, but may be found in a number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself." *Dystar*, 464, F.3d at 1361 (citing *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999)). "[W]here the testimony of an expert witness is relevant to determining the knowledge that a person of ordinary skill in the art would have possessed at a given time, this is one kind of evidence that is pertinent to our evaluation of a *prima facie* case of obviousness." *Alza Corp.*, 464 F.3d at 1294.

43. Therefore, the "motivation-suggestion-teaching" test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

44. Merely because a reference discloses more than one alternative does not constitute a teaching away from the patented system unless the disclosure criticizes, discredits, or

otherwise discourages the solution claimed. *In re Fulton*, 391 F.3d 1195, 1200-01 (Fed. Cir. 2004). Instead, the proper inquiry is "whether there is something in the prior art as a whole to suggest the *desirability*, and thus the obviousness, of making the combination, not whether there is something in the prior art as a whole to suggest that the combination is the *most desirable* combination available." *Id.* (emphasis in original).

45. The secondary considerations may include commercial success, long-felt but unsolved needs, failure of others, licenses, unexpected results, and simultaneous development by others. *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1129 (Fed. Cir. 2000); *Monarch Knitting Machinery Corp. v. Sulzer Morat GMBH*, 139 F.3d 877, 883-84 (Fed. Cir. 1998); *ISCO Int'l, Inc. v. Conductus, Inc.*, 279 F. Supp. 2d 489, 498 (D. Del. 2003). There must be a nexus between the secondary consideration and the claimed invention to be relevant to the obviousness inquiry. *Brown & Williamson*, 229 F.3d at 1130.

46. Commercial success of an accused infringer is not relevant to the obviousness inquiry unless the patentee proves that the accused product actually infringed the claim at issue in the patent. *See Truswal Systems Corp. v. Hydro-Air Engineering, Inc.*, 813 F.2d 1207, 1215 (Fed. Cir. 1987) (Judge Rich, concurring) ("Now as a matter of common sense, the way one proves commercial success of a patented invention is, first to demonstrate the success of the patentee or one or more licensees. Second, once an infringer is sued *and proved to be an infringer*, its sales are appropriately proved and added to the others.") (emphasis in original).

47. The Federal Circuit has made clear that there must be evidence of nexus where the evidence of commercial success presented is a license, because it is often "cheaper to take licenses than to defend infringement suits." *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1324 (Fed. Cir. 2004). Thus, while licenses "may constitute evidence of

nonobviousness...only little weight can be attributed to such evidence if the patentee does not demonstrate a nexus between the merits of the invention and the licenses of record." *Id.* Without a showing of nexus, "the mere existence of...licenses is insufficient to overcome the conclusion of obviousness" when there is a strong prima facie case of obviousness. *Id.*

48. Just as the failure of others to make the invention may be evidence that an invention would not have been obvious, independent making of the invention by persons other than the inventor at about the same time may be evidence that the invention would have been obvious. *Ecolchem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1379 (Fed. Cir. 2000).

5. The Patents-in-Suit Are Invalid As Not Enabled

49. An issue that remains to be litigated is whether the patents-in-suit are invalid for lack of enablement. A patent's specification must "contain a written description...of the manner and process of making and using [the invention] . . . in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same. . . ." 35 U.S.C. § 112 (2000). Accordingly, there is a requirement that "the patent specification enable those skilled in the art to make and use the full scope of the claimed invention without undue experimentation" *Invitrogen Corp. v. Clontech Labs., Inc.*, 429 F.3d 1052, 1070 (Fed. Cir. 2005). A patent is invalid if it is not enabled. *See e.g., Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki, Co. Ltd.*, 535 U.S. 722, 736 (2002).

50. Whether undue experimentation is required, therefore rendering a patent invalid, requires a factually intensive inquiry, including the consideration of: (1) the quantity of experimentation necessary; (2) the amount of direction or guidance presented; (3) the presence or absence of working examples; (4) the nature of the invention; (5) the state of the prior art; (6) the relative skill of those in the art; (7) the predictability of unpredictability of the art; and (8) the

breadth of the claims. *Falko-Gunter Falkner*, 448 F.3d at 1363 (quoting *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)). This inquiry can invalidate "patent claims as not having been enabled, despite the PTO's having allowed those claims." *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1245 (Fed. Cir. 2003).

51. "[A]n inventor's failed attempts to practice an invention are relevant evidence of non-enablement." *Novo Nordisk Pharmaceuticals, Inc. v. Bio-technology General Corp.*, 424 F.3d 1347, 1362 (Fed. Cir. 2005); *see also AK Steel Corp.*, 344 F.3d at 1244-45.

52. Section 112's enablement requirement can also limit the scope of the patent claims, as "[t]he scope of [patent] claims must be less than or equal to the scope of enablement." *Invitrogen Corp.* at 1070-71. The requirement that the specification enable skilled artisans to "make and use the full scope of the claimed invention," ensures that the invention can be used "as broadly as it is claimed." *Id.* at 1070-71 (quoting *In re Goodman*, 11 F.3d 1046, 1050 (Fed. Cir. 1993)). Therefore, expansive claim language may not be supported, such that § 112's requirements are met, merely by describing one embodiment of the thing claimed. *Lizardtech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1346 (Fed. Cir. 2005).

6. The Patents-in-Suit Are Invalid For Failure to Provide Adequate Written Description

53. An issue that remains to be litigated is whether the patents-in-suit are invalid for lack of a sufficient written description. Section 112 of the patent act requires that "[t]he specification shall contain a written description of the invention. . . ." 35 U.S.C. § 112, ¶ 1 (2000). This written description requirement is distinct from the enablement requirement found in § 112. *Invitrogen Corp.*, 429 F.3d at 1071. The written description clause mandates that the specification satisfy two requirements. *Lizardtech, Inc.*, 424 F.3d at 1344-45. First, "it must describe the manner and process of making and using the invention so as to enable a person of

skill in the art to make and use the *full scope* of the invention without undue experimentation." *Id.* (emphasis added). Second, the specification "must describe the invention sufficiently to convey to a person of skill in the art that the patentee had possession of the claimed invention at the time of the application." *Id.*

54. Therefore, to satisfy the written description requirement, patent applicants "must. . . convey to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention." *Falko-Gunter Falkner*, 448 F.3d at 1365 (citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)). The specification must also describe the full scope of the invention. *Lizardtech, Inc.*, 424 F.3d at 1344-45. The purpose of these requirements is "to prevent an applicant from *later* asserting that he invented that which he did not. . . ." *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319 (Fed. Cir. 2003) (citing *Amgen, Inc.*, 314 F.3d at 1313) (emphasis in original). The applicant is therefore required "to recount his invention in such detail that his *future* claims can be determined to be encompassed within his *original* creation." *Id.*

7. Claims of the Patents-in-Suit Are Invalid for Failure to Name The Correct Inventors

55. Inventorship is a question of law with underlying factual issues. *Bd. of Educ. v. Am. Bioscience*, 333 F.3d 1330, 1337 (Fed. Cir. 2003). Section 102(f) provides that "[a] person shall be entitled to a patent unless...he did not himself invent the subject matter sought to be patented." This subsection mandates that a patent accurately list the correct inventors of the claimed invention. *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1349 (Fed. Cir. 1998). If more than one inventor is listed on a patent, each joint inventor must contribute to the conception of the invention in a way that is not insignificant in quality when measured against the dimension of the full invention. *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1359 (Fed. Cir. 2004); *BJ*

Services Co. v. Halliburton Energy Services, Inc., 338 F.3d 1368, 1373 (Fed. Cir. 2003); *Caterpillar Inc. v. Sturman Industries, Inc.*, 387 F.3d 1358, 1377 (Fed. Cir. 2004). Conception occurs "when one of ordinary skill in the art could construct [the invention] without unduly extensive research or experimentation." *Sewall v. Walters*, 21 F.3d 411, 415 (Fed. Cir. 1994).

56. "One does not qualify as a joint inventor merely by assisting the actual inventor." *Board of Education v. American Bioscience, Inc.*, 333 F.3d 1330, 1338 (Fed. Cir. 2003). Rather, "[a]n inventor may solicit the assistance of others when perfecting the invention without losing any patent rights." *Trovan, Ltd. v. Sokymat Sa, Irori*, 299 F.3d 1292, 1301-1302 (Fed. Cir. 2002).

57. The inventorship analysis requires two steps. *Id.* at 1302. First, the asserted claims must be construed. *Id.* Second, the alleged contributions of each asserted co-inventor must be compared with the subject matter of the individual claims. *Id.* In the case of misjoinder, where more than the correct inventors are named, the patent is invalid. *Id.* at 1301.

8. The Patents-in-Suit Are Invalid Because They Were Derived from the Work of Others

58. An applicant is not entitled to a patent if the applicant did not invent the subject matter sought to be patented, but instead derived the invention from another. 35 U.S.C. § 102(f); *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1576 (Fed. Cir. 1997).

59. The party asserting invalidity may prove derivation by showing prior conception of the invention by another and communication of that conception to the patentee. *Gambro Lundia AB*, 110 F.3d at 1576.

60. Information derived by an inventor from another is prior art to claims encompassing that information, even though the derived information may never have been publicly available. *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1401-02 (Fed. Cir.

1997) (involving confidential disclosures made to the inventor and not submitted to the PTO during patent prosecution.)

61. Subject matter derived from another is unpatentable. *OddzOn Prods., Inc.*, 122 F.3d at 1403-1404. Further, when combined with other prior art the derived invention may be obvious, and thus unpatentable under a combination of 102(f) and 103. *Id.*

9. Claims of the Patents-in-Suit Are Indefinite

62. A determination of claim indefiniteness is a legal conclusion that is drawn from the court's performance of its duty as the construer of the claims. *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). A claim is indefinite if it is not amenable to construction. *Id.* A claim is considered indefinite if it does not reasonably apprise those skilled in the art of its scope. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1217 (Fed. Cir. 1991).

10. The Doctrine of Assignor Estoppel Does Not Apply Against Illumina

63. Assignor estoppel does not prevent Illumina from challenging the validity of the patents-in-suit. Assignor estoppel is an equitable defense that may prevent an inventor who assigns his rights in a patent from subsequently contending that the patent he assigned has no value. *Diamond Scientific Co. v. Ambico, Inc.*, 848 F.2d 1220, 1224 (Fed. Cir. 1988).

64. In some circumstances assignor estoppel can limit challenges by those who are in privity with the assignor. *Diamond Scientific Co.*, 848 F.2d at 1224. However, to establish privity, the court must "balance the equities" in light of the act of infringement by evaluating "all direct and indirect contacts between the assignor and the defendant," such as whether the assignor had substantial control over the defendant's operations such that the defendant is merely the assignor's "corporate disguise." *Acushnet Co. v. Dunlap Maxfli Sports Corp.*, Co. CIV. A. 98-717-SLR, 2000 WL 987979, at * 2-3 (D. Del., June 29, 2000). The proper inquiry is

"whether the ultimate infringer availed itself of the inventor's 'knowledge and assistance' to conduct infringement." *Intel Corp v. United States Int'l Trade Comm'n*, 946 F.2d 821, 838 (Fed. Cir. 1991). The doctrine of assignor estoppel "was not designed to prevent companies from competing for talented employees. . . ." *Acushnet Co.*, 2000 WL 987979, at * 3. Privity, therefore, depends on the nature of the parties' relationship "in light of the alleged infringement." *Mentor Graphics Corp. v. Quickturn Design Sys., Inc.*, 150 F.3d 1374, 1397 (Fed. Cir. 1998).

65. Even where assignor estoppel applies, it may not preclude other patent defenses that arise post-assignment, such as inequitable conduct. *Shamrock Techs, Inc. v. Medical Sterilization, Inc.*, 903 F.2d 789, 795-96 (Fed. Cir. 1990). Further, assignor estoppel does not preclude "evidence of prior art to narrow the scope of the claims of the patent" to bring the accused device outside the scope of the claimed invention." *Diamond Scientific Co.*, 848 F.2d at 1226; *see also Mentor Graphics Corp.*, 150 F.3d at 1379 ("An estopped party may also argue for a narrow claim construction or that the accused devices are within the prior art and therefore cannot infringe.").

C. The Patents-in-Suit Are Unenforceable Due to the Inequitable Conduct That Occurred During the Prosecution of the Patent Applications and Related Patent Applications

66. As provided by 37 C.F.R. §1.56(a), "[e]ach individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." This standard applies not only to the inventor, but also the prosecuting attorney or agent, and anyone else associated with the inventor or the assignee who is substantively involved in the preparation or prosecution of the application and extends throughout the patent's entire prosecution history. *Fox Indus., Inc. v. Structural*

Preservation Sys., Inc., 922 F.2d 801, 804 (Fed. Cir. 1990); *Molins PLC v. Textron, Inc.*, 48 F.3d 1172, 1178 n.6 (Fed. Cir. 1995).

67. A patent may be rendered unenforceable for inequitable conduct if an applicant, with intent to mislead or deceive the examiner, fails to disclose material information or submits materially false information to the PTO during prosecution. *Digital Control Inc. v. The Charles Machine Works*, 437 F.3d 1309, 1313 (Fed. Cir. 2006).

68. Determining whether a party has engaged in such conduct is a two-step analysis: (1) whether the conduct meets a threshold level of materiality; and (2) whether the evidence shows a threshold level of intent to mislead the PTO. *Perspective Biosystems v. Pharmacia Biotech.*, 225 F.3d 1315, 1318-19 (Fed. Cir. 2000). "The more material the omission or the misrepresentation, the lower the level of intent required to establish inequitable conduct, and vice versa." *Pharmacia Corp. v. ParPharm., Inc.*, 417 F.3d 1369, 1373 (Fed. Cir. 2005). If the materiality and intent thresholds are met, a balancing test is used to determine whether the scales tilt to a conclusion that inequitable conduct occurred. *Critickon, Inc. v. Becton Dickinson Vascular Access, Inc.*, 120 F.3d 1253, 1256 (Fed. Cir. 1997).

69. A patent applicant's duty of candor and good faith is not limited to the disclosure of prior art; rather, a patent applicant must disclose all material information to the PTO. *Critikon, Inc.*, 120 F.3d at 1258; 37 C.F.R. § 1.56(a) (1992). Information is material to patentability where it is not cumulative to information already of record or being made of record in the application, and: (1) if a reasonable examiner would have considered such information important in deciding whether to allow the application; (2) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or (3) it refutes, or is inconsistent with, a position the applicant takes in opposing an argument of

unpatentability relied on by the Office or asserting an argument of patentability. 37 C.F.R. § 1.56(b); *Digital Control*, 437 F.3d at 1314-16. A withheld reference may be highly material when it discloses a more complete combination of relevant features, even if those features are before the patent examiner in other references. *Semiconductor Energy Laboratory Co., v. Samsung Electronics Co.*, 204 F.3d 1368, 1374 (Fed. Cir. 2000).

70. A reference is not immaterial simply because the patent claims are eventually deemed by an examiner to be patentable thereover. *Molins PLC*, 48 F.3d at 1178.

71. An applicant's duty of candor and good faith, however, is breached when the applicant cites excessive and irrelevant references in an attempt to "bury" the examiner. *Rohm & Haas Co. v. Crystal Chemical Co.*, 722 F.2d 1556, 1573 (Fed. Cir. 1983); *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F.Supp. 948, 965 (D. Fla. 1972).

72. Intent "need not, and rarely can, be proven by direct evidence." *Bruno Independent Living Aids, Inc. v. Acorn Mobility Services, LTD*, 394 F.3d 1348, 1354 (Fed. Cir. 2005). Instead, intent may be inferred from the surrounding circumstances. *Critikon*, 120 F.3d at 1256. Intent may be inferred where a patent applicant knew, or should have known, that withheld information would be material to the PTO's consideration of the application. *Id.* A lapse on the part of the Examiner does not excuse the applicant. *KangaROOS U.S.A., Inc. v. Caldor, Inc.*, 778 F.2d 1571, 1576 (Fed. Cir. 1985).

73. In the absence of a credible explanation, intent to deceive is generally inferred from the facts and circumstances surrounding a knowing failure to disclose material information. *Frazier v. Roessel Cine Photo Tech, Inc.*, 417 F.3d 1230, 1235-6 (Fed. Cir. 2005) (quoting *Bruno Indep. Living Aids, Inc.*, 394 F.3d at 1354. Applicants cannot overcome the inference with "[a] mere denial of intent to mislead. . . ." *Critikon, Inc.*, 120 F.3d at 1257.

74. The fact of misrepresentation, coupled with proof that the party making it had knowledge of its falsity, is enough to warrant drawing the inference that there was a fraudulent intent. *Lipman v. Dickinson*, 174 F.3d 1363, 1370 (Fed. Cir. 1999).

75. Implied notice of a fact is notice that is inferred from facts that a person had a means of knowing and that is thus imputed to that person; actual notice of facts or circumstances that, if properly followed up, would have led to a knowledge of the particular fact in question. *Brasseler, U.S.A. v. Stryker Sales Corp.*, 267 F.3d 1370, 1382 (Fed. Cir. 2001).

76. To avoid a finding of inequitable conduct, doubts concerning whether information is material should be resolved in favor of disclosure. Where an applicant, his representatives, or other involved in a substantial way with the application knew of information the materiality of which may be so readily be determined, he cannot intentionally avoid learning of its materiality, even through gross negligence; in such cases, you may find that the applicant should have known of the materiality of the information. *Brasseler, U.S.A. v. Stryker Sales Corp.*, 267 F.3d 1370, 1380 (Fed. Cir. 2001). Close cases should be resolved by disclosure, not unilaterally by the applicant. *Critkon*, 120 F.3d at 1256 (citing *LaBounty Mfg., Inc. v. United States Int'l Trade Comm'n*, 958 F.2d 1066, 1076 (Fed. Cir. 1992)).

77. An applicant, his representative, or others involved in a substantial way with a patent application cannot cultivate ignorance or disregard warnings that material information or prior art may exist, merely to avoid actual knowledge of that information or prior art. Where one does, deceptive intent may be inferred. Once an applicant, representative, or others involved has notice that information exists that appears material and questionable, that person cannot ignore that notice in an effort to avoid his duty to disclose. *Brasseler, U.S.A.*, 267 F.3d at 1382.

78. Attorneys representing patent applicants must conduct meaningful inquiries when the surrounding factual circumstances would cause a reasonable attorney to understand that relevant and questionable material information should be assessed to determine whether it should be disclosed to the Patent Office. *Id.* at 1385.

79. Those individuals covered by 37 C.F.R. § 1.56 are also required "to bring to the attention of the examiner...information within their knowledge as to other copending United States applications which are material to patentability of the application in question." MPEP § 2001.06(b). It is improper to "assume that the examiner of a particular application is necessarily aware of other applications 'material to patentability' of the application in question." *Id.* See also *Dayco Prod., Inc. v. Total Containment*, 329 F.3d 1358, 1365-69 (Fed. Cir. 2003); MPEP § 2004 at No. 9 ("Do not rely on the examiner of a particular application to be aware of other applications belonging to the same applicant or assignee. It is desirable to call such applications to the attention of the examiner even if there is only a question that they might be 'material to patentability' of the application the examiner is considering. It is desirable to be particularly careful that prior art or other information in one application is cited to the examiner").

80. A patent is unenforceable if, in bad faith or with deceptive intent, the named inventor(s) fails to correctly name all inventors. See, e.g., *Frank's Casing Crew & Rental Tools, Inc. v. PMR Techs., Ltd.*, 292 F.3d 1363 (Fed. Cir. 2002).

81. Where withheld information is material and the applicant, his representatives, or others involved in a substantial way with the application knew or should have known of the materiality, the applicant, representatives, and involved others will have great difficulty in

establishing subjective good faith sufficient to overcome an inference of intent to mislead. *Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, 326 F.3d 1226, 1239 (Fed. Cir. 2003).

82. Inventors represented by counsel are presumed to know the law. *Brasseler*, 267 F.3d at 1385.

83. Where the subject matter for which a patent is being sought is or has been involved in litigation, the existence of such litigation and any other material information arising therefrom must be brought to the attention of the PTO. "Examples of such material information include evidence of possible prior public use or sales, questions of inventorship, prior art, allegations of 'fraud,' 'inequitable conduct,' and 'violation of duty of disclosure'...[and] any assertion that is made during litigation which is contradictory to assertions made to the examiner." MPEP Section 2001.06(c). *See also Critikon*, 120 F.3d at 1259. Litigation is material *per se* to patentability. *See Daimlerchrysler AG v. Feuling Advanced Tech., Inc.*, 276 F. Supp. 2d 1054, 1063 (S.D. Cal. 2003). Additionally, when an ancestor patent is involved in litigation, that litigation involves the same subject matter as any of its children. *Id.* at 1063 n.4 (patents that were continuations-in-part necessarily involved the same subject matter as an ancestor patent); *Nisus Corp. v. Perma-Chink Systems, Inc.*, 421 F.Supp.2d 1084, 1104 (E.D. Tenn. 2006) (finding that litigation involving an ancestor patent was a related litigation involving the same subject matter as the child application).

84. Inequitable conduct committed during prosecution of a parent application can "infect" a later filed application. *See Consolidated Aluminum Corp. v. Foseco Intern. Ltd.*, 910 F.2d 804, 810-11 (Fed. Cir. 1990). To prove infectious unenforceability, an accused infringer must establish two elements: (1) that a related patent is unenforceable due to inequitable conduct; and (2) that the patent(s) at issue bear an immediate and necessary relation to that alleged

inequitable conduct." *Mosaid Technologies Inc. v. Samsung Electronics Co., Ltd.*, 362 F. Supp. 2d 526 (D. N.J. 2005).

D. Affymetrix Has Come Before the Court with Unclean Hands

85. An issue that remains to be litigated is whether Affymetrix is barred from asserting the patents-in-suit against Illumina under the doctrine of unclean hands. Remedies are available under the unclean hands doctrine if some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in litigation. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245 (1933); *Aptix Corp. v. Quickturn Design Systems, Inc.*, 269 F.3d 1369, 1373-1375 (Fed. Cir. 2001).

86. The doctrine of unclean hands is "not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion." *Keystone Driller Co.*, 290 U.S. at 245-46. Unclean hands is an equitable defense that can be found both with respect to withholding information from the PTO and with respect to misconduct in litigation. *See Precision Instrument Mfg. Co. v. Automatic Maintenance Machinery Co.*, 324 U.S. 806, 816 (1945) (unclean hands found where "[t]he history of the patents and contracts at issue is steeped in perjury and undisclosed knowledge of perjury"); *Consolidated Aluminum Corp. v. Foseco Intern. Ltd.*, 910 F.2d 804, 812 (Fed. Cir. 1990) (unclean hands can be found both with respect to withholding information from the Patent Office and with respect to conduct in litigation).

87. An unconscionable act committed during the prosecution of a patent before the PTO has an immediate and necessary relationship to any subsequent attempt to enforce the patent in a court of equity, and the court has the discretion under the unclean hands doctrine to dismiss the litigation brought to enforce such a patent. *Hoffman-La Roche, Inc. v. Promega Corp.*, 319 F. Supp. 2d 1011, 1017 (N.D. Cal. 2004).

88. The court may consider conduct occurring both before and after the patent was issued in determining whether a party has unclean hands. *Hoffman-La Roche, Inc.*, 319 F. Supp. 2d at 1025. If an unconscionable act in question took place during litigation, the Court has authority to use the unclean hands doctrine to dismiss specific causes of action or the lawsuit in its entirety. *Id.* at 1017.

E. Affymetrix is Barred from Enforcing the Patents-in-Suit Because It Committed Prosecution Laches

89. An issue that remains to be litigated is whether Affymetrix is barred from asserting any of the patents-in-suit against Illumina under the doctrine of prosecution laches. Prosecution laches may be applied to "bar enforcement of patent claims following an unreasonable and unexplained delay in prosecution, even if the applicant technically complied with all pertinent statutes and rules." *Novozymes A/S v. Genencor International, Inc.*, 446 F.Supp.2d 297, 333 (D. Del. 2006) (citing *Symbol Techs., Inc. v. Lemelson Med.*, 422 F.3d 1378, 1385 (Fed. Cir. 2005)). The doctrine of prosecution laches applies when an applicant misuses or abuses the patent system. *Symbol Techs., Inc.*, 422 F.3d at 1385-86.

90. Continued refilling of patent applications for the business purpose of delaying their issuance can be an abuse of the patent system. *Id.* There are no "firm guidelines for determining when such laches exists. . . ." *Id.* Further, "there are no strict time limitations for determining whether continued refilling of patent applications is a legitimate utilization of statutory provisions or an abuse of those provisions." *Id.* For at least U.S. Pat. Nos. 6,646,243 and 6,355,432, Affymetrix waited until it saw Illumina's products before seeking patent claims to cover these products. As a result, prosecution laches applies and bars Affymetrix from enforcing the patents-in-suit against Illumina.

F. Affymetrix Is Estopped from Enforcing the Patents-in-Suit Against Illumina

91. An issue that remains to be litigated is whether Affymetrix is barred from asserting the patents-in-suit against Illumina under the doctrine of equitable estoppel. Equitable estoppel is neither limited to a particular factual situation nor subject to resolution by simple or hard and fast rules. *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1041 (Fed. Cir. 1992).

92. Three elements must be established to bar a patentee's suit by reason of equitable estoppel: (1) the patentee, through misleading conduct, leads the alleged infringer to reasonably infer that the patentee does not intend to enforce its patent against the alleged infringer ("Conduct" may include specific statements, action, inaction, or silence where there was an obligation to speak); (2) the alleged infringer relies on that conduct; and (3) due to its reliance, the alleged infringer will be materially prejudiced if the patentee is allowed to proceed with its claim. *Id.* at 1028. If an alleged infringer establishes these three elements by a preponderance of the evidence, the patentee's claim may be entirely barred. *Id.*

93. In order for there to be equitable estoppel, "the alleged infringer must have knowledge of the patentee and its patent and must reasonably infer that the patentee acquiesced to the allegedly infringing activity for some time." *Winbond Elec. Corp. v. Int'l Trade Comm'n*, 262 F.3d 1363, 1374 (Fed. Cir. 2001).

G. Even If Infringement Is Found, and the Patents-in-Suit Are Not Found Invalid or Unenforceable, Affymetrix's Failure To Mark Its Patented Products Limits The Period For Which It Is Entitled to Recover Damages

94. Another issue that remains to be litigated is whether Affymetrix gave Illumina notice of its claim that Illumina's products and/or methods infringed the patents-in-suit. 35 U.S.C. § 287(a) requires patentees to provide notice of their patents rights to recover damages for infringement. Once the patentee sells patented articles, it is not entitled to damages for

infringement until it has complied with § 287(a). *American Med. Sys., Inc. v. Medical Eng'g Corp.*, 6 F.3d 1523, 1537 n. 18 (Fed. Cir. 1993). A patentee must either: (1) mark its patented products with the relevant patent number; or (2) give the alleged infringer actual notice of the alleged infringement to comply with § 287(a). *Id.* The patentee bears the burden to establish by a preponderance of the evidence that it complied with § 287(a), and the date by which its compliance occurred. *Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1447 (Fed. Cir. 1998).

1. Affymetrix cannot meet its burden to prove that it complied with § 287(a)'s constructive notice provision

95. Once a patentee begins selling patented articles, it must "consistently mark[] substantially all of its patented products, and...no longer distribut[e] unmarked products" to comply with the constructive notice provision of § 287(a). *American Med. Sys.*, 6 F.3d at 1538. When a patent contains both method and apparatus claims, the patentee must mark the patented article "to the extent that there is a tangible item to mark by which notice of the asserted claims can be given." *Id.*

96. A patentee's licensees must also mark patented articles with the relevant patent numbers. *Maxwell v. J. Baker Inc.*, 86 F.3d 1098, 1111-12 (Fed. Cir. 1996). Further, the patentee must take "reasonable efforts to ensure [the licensee's] compliance with the marking requirements." *Id.*

97. To appropriately mark patented articles under § 287(a), the word "patent" or the abbreviation "pat." together with the number of the patent must be placed directly on the patented article. 35 U.S.C. § 287 (a). When, due to the nature of the patented article, the patentee cannot mark the article itself, the patentee may affix a label with the patent numbers to the article or the articles packaging. *Id.* However, it is generally not sufficient to comply with § 287(a) to place the patent numbers on package inserts, as opposed to the packaging itself.

Stryker Corp. v. Intermedics Orthopedics, Inc., 891 F.Supp. 751, 829-30 (E.D.N.Y. 1995), *aff'd* 96 F.3d 1409 (Fed. Cir. 1996); *Metrologic Instruments, Inc. v. PSC, Inc.*, No. 99-4876, 2004 WL 2851955, at * 20 (D.N.J. Dec. 13, 2004). For instance, if the patentee includes other marking or printing on the patented article, the patent numbers should be affixed to the article itself, not the packaging. *Rutherford v. Trim-Tex, Inc.*, 803 F.Supp. 158, 163-64 (N.D. Ill. 1992).

2. Affymetrix cannot meet its burden to show that it complied with § 287(a)'s actual notice provision

98. To give actual notice, the patent owner must make an "affirmative communication to the alleged infringer of a specific charge of infringement by a specific accused product or device." *Gart v. Logitech, Inc.*, 254 F.3d 1334, 1345 (Fed. Cir. 2001). A communication of infringement regarding one product or device is insufficient to provide actual notice of other products or devices also made, sold, or used by the accused infringer. *See id.* at 1346-47 (notice as to defendant's TRACKMAN VISTA products did not provide notice as to related TRACKMAN MARBLE products); *see also Mosaid Technologies Inc. v. Samsung Electronics Co., Ltd.*, 362 F. Supp. 2d 526, 557-58 (D. N.J. 2005) (holding that naming a specific product did not give notice as to related products). Instead, "the actual notice requirement of Section 287(a) is satisfied when the recipient is informed of the identity of the patent and the activity that is believed to be an infringement, accompanied by a proposal to abate the infringement. . . ." *AT&T Corp. v. Microsoft Corp.*, 290 F.Supp.2d 409, 412 (S.D. N.Y. 2003) (citing *SRI Int'l v. Advanced Technology Labs.*, 127 F.3d 1462, 1470 (Fed. Cir. 1997)).

99. Whether an accused infringer had independent knowledge of the patent(s)-in-suit is irrelevant. *AT&T Corp.*, 290 F.Supp.2d at 412. "The correct approach to determining actual notice under [S]ection 287 must focus on the action of the patentee, not the knowledge or

understanding of the infringer." *Id.* (citing *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 187 (Fed. Cir. 1994)).

H. Affymetrix Cannot Prove Lost Profits Damages

100. An issue that remains to be litigated is the amount of damages owed to Affymetrix if Illumina is found to have infringed the patents in suit (which Illumina denies). Upon a finding of infringement, the patentee is entitled to "damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court." 35 U.S.C. § 284.

101. "Damages is the amount of loss to a patentee. A patentee may seek to recover actual damages, usually, the amount of profits actually lost, or if unable to prove actual damages, the patentee is entitled to a reasonable royalty." *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 926 F.2d 1161, 1164 (Fed. Cir. 1991) (internal citations omitted).

102. To recover lost profits, the patentee must have been selling some item, the sale and profits of which can be proven to have been lost due to infringing sales. *Poly-America, LP. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1311 (Fed. Cir. 2004) ("the patentee needs to have been selling some item, the profits of which have been lost due to infringing sales, in order to claim damages consisting of lost profits").

103. Thus, to recover lost profits as opposed to royalties, a patent owner must prove a causal relation between the infringement and claimed loss of profits. The patent owner must show that "but for" the infringement, it would have made the infringer's sales. *BIC Leisure Prods, Inc. v. Windsurfing Int'l., Inc.*, 1 F.3d 1214, 1218 (Fed. Cir. 1993)

104. Under the *Panduit* test, there are four elements required to prove lost profits: (1) a demand for the patented product; (2) the absence of an acceptable, non-infringing substitute for the patented product; (3) the patent owner's manufacturing and marketing capability to exploit

the demand for the patented product; and (4) the amount of profit the patent owner would have expected to make if the patent owner had made the infringer's sales. *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 926 F.2d 1161, 1164 (Fed. Cir. 1991) (citing *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156 (6th Cir. 1978)).

105. The first element of *Panduit* requires that "demand for the patentee's product and the infringer's product is interchangeable." *Biacore, A.B. v. Thermo Bioanalysis Corp.*, 79 F. Supp. 2d 422, 469 (D. Del. 1999) (citing *BIC Leisure Prods, Inc.*, 1 F.3d at 1218 ("This factor requires, therefore, that the patent owner and the infringer sell substantially the same product.")) The patentee's product must be sufficiently similar to the product that is the subject of a claimed lost sale -- in terms of price, product characteristics, and marketing channels -- to compete for the same customers, otherwise the infringing customers will not necessarily transfer their demand to the patentee's product in the absence of the infringing product. *Comair Rotron Inc. v. Nippon Densan Corp.*, 49 F.3d 1535, 1540 (Fed. Cir. 1995) ("[I]f the products are not sufficiently similar -- in terms of price, product characteristics, and marketing channels -- to compete for the same customers, the infringing customers will not necessarily transfer their demand to the patentee's product in the absence of the infringing product.")

106. If the patentee's and the infringer's products are not substitutes in a competitive market, *Panduit's* first two factors do not meet the 'but for' test that is a prerequisite for lost profits. *BIC Leisure Prods, Inc.*, 1 F.3d at 1218. To be substitutes in the market, the patent owner and the infringer must sell products sufficiently similar to compete against each other in the same market segment. *Id.* To be acceptable to the infringer's customers in an elastic market, the alleged alternative "must not have a disparately higher price than or possess characteristics significantly different from, the patented product. *Id.* at 1219.

107. Damages may not be determined by mere speculation or guess. *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1030 (Fed. Cir. 1996). Affymetrix, therefore, bears the burden of proving the amount of damages to a reasonable probability. *Id.*

108. For lost profits, the amount of lost profits is the difference between the patentee's pecuniary position after the infringement and what it can show with reasonable certainty its condition would have been if the infringement had not occurred. *Grain Processing Corp. v. American Maize Prods., Co.*, 185 F.3d 1341, 1350 (Fed. Cir. 1999). This requires sound economic proof of the nature of the market and likely outcomes with infringement factored out of the picture. *Id.*

109. A fair and accurate reconstruction of the 'but for' market also must take into account alternative actions the infringer foreseeably would have undertaken and the nature and value of the product that the infringer would have made had he not infringed. *Id.* at 1350-1351.

110. The patentee bears the burden of proving, by a preponderance of the evidence, that it had the manufacturing and marketing capacity to meet the demand that was generated by its own customers and sales plus the capacity to meet the demand generated by the sales for which it claims lost profits. *Datascope Corp. v. SMEC, Inc.*, 879 F.2d 820, 825 (Fed. Cir. 1989). This requires proof of factors such as an adequate distribution system and sales personnel in addition to manufacturing capacity. *Polaroid Corp. v. Eastman Kodak Co.*, 16 USPQ2d 1481, 1491 (D. Mass. 1990).

I. A Reasonable Royalty As A Measure of Damages

111. Another issue of law that remains to be litigated is the appropriate amount of damages under a reasonable royalty analysis. "A reasonable royalty 'may be based upon an established royalty, if there is one, or if not, upon a hypothetical royalty resulting from arm's length negotiations between a willing licensor and a willing licensee.'" *Philips Elecs. N. Am.*

Corp. v. Contec Corp., 411 F. Supp. 2d 470,478 (D. Del. 2006); *see also Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).

112. The hypothetical negotiation is assumed to have occurred on the date infringement began. *Wang Labs., Inc. v. Toshiba Corp.*, 993 F.2d 858, 870 (Fed. Cir. 1993).

113. A reasonable royalty is the amount that Illumina, desiring to manufacture, use or sell a patented article, as a business proposition, would be willing to pay as a royalty and yet be able to make, use or sell the patented item in the market at a reasonable profit. *Id.*

114. A reasonable royalty can only be applied to the infringer's sales which are found to have actually resulted in an infringement. See 35 U.S.C. § 284; *Oak Indus., Inc. v. Zenith Elecs. Corp.*, 726 F. Supp. 1525, 1543 (N.D. Ill. 1989) (rejecting theory that royalty rate should be applied to all potentially infringing items sold; only those found to be actually infringing are appropriately taxed).

115. Neither the "entire market value" rule nor the "convoyed sales" rule apply here in determining the sales that are subject to royalty, because, among other reasons, the parties to the hypothetical negotiation under the then-prevailing business circumstances would not have agreed to subject non-infringing conduct or sale to a royalty. *See Georgia Pacific Corp.*, 318 F. Supp. 1116.

116. In determining the reasonable royalty, district courts have been directed by the Federal Circuit to consider the *Georgia Pacific* factors. *Dow Chem. Co. v. Mee Indus., Inc.*, 341 F.3d 1370, 1382 (Fed. Cir. 2003). The *Georgia Pacific* factors include: (1) The royalties received by the patentee for the licensing of the patent in suit; (2) the rates paid by the licensee for the use of other patents comparable to the patent in suit; (3) the nature and scope of the license; (4) the licensor's established policy and marketing program to maintain his patent

monopoly; (5) the commercial relationship between the licensor and the licensee; (6) the effect of selling the patented specialty in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of his non-patented items; and the extent of such derivative or convoyed sales; (7) the duration of the patent and the term of the license; (8) the established profitability of the product made under the patent; its commercial success; and its current popularity; (9) the utility and advantages of the patent property over the old modes and devices, if any, that had been used for working out similar results; (10) the nature of the patented invention; (11) the extent to which the infringer has made use of the invention and any evidence probative of the value of that use; (12) the portion of the profit or selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions; (13) the portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer; (14) the opinion testimony of qualified experts; and (15) the amount that a licensor and a licensee would have agreed upon if both had been reasonably and voluntarily trying to reach an agreement. *Georgia Pacific Corp.*, 318 F. Supp. at 1120.

J. Prejudgment Interest

117. Under 35 U.S.C. § 284, a successful patentee may recover damages adequate to compensate for infringement. As the Supreme Court has stated, "§ 284 does not require an award of prejudgment interest whenever infringement is found." *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 654 (1983).

118. Instead, prejudgment interest should be awarded "where necessary to afford the plaintiff full compensation for infringement." *Id.* at 656. Under this standard, the grant or denial of prejudgment interest, the rate of such interest, and whether to award compound or simple

interest are all matters within the Court's discretion. *Bio-Rad Labs, Inc. v. Nicolet Instrument Corp.*, 807 F.2d 964, 967-69 (Fed. Cir. 1986). In exercising this discretion, the Court may limit prejudgment interest, or deny it altogether, where the patent owner unduly delays prosecuting the lawsuit and that delay results in prejudice to the defendant. *General Motors Corp.*, 461 U.S. at 656; *Crystal Semiconductors Corp. v. Tritech Microelectronics Int'l., Inc.*, 246 F.3d 1336, 1361-62 (Fed. Cir. 2001).

K. If Infringement Is Found Illumina Did Not Willfully Infringe the Patents-in-Suit, and Enhanced Damages Should Not Be Awarded

119. Issues that remain to be litigated if Illumina is found to have infringed the patents-in-suit (which it has not) are whether Illumina's alleged infringement was willful (which it was not) and/or whether enhanced damages and/or attorneys' fees should be awarded to plaintiff (they should not be).

120. An individual has "an affirmative duty of due care to avoid infringement of the known patent rights of others." *Knorr-Bremse Systeme Fuer Nutzfahrzeuge v. Dana Corp.*, 383 F.3d 1337, 1345-46 (Fed. Cir. 2004).³

121. The plaintiff must prove "by clear and convincing evidence in view of the totality of the circumstances that [defendant] acted in disregard of the...patent and lacked a reasonable basis for believing it had a right to do what it did." *WMS Gaming Inc. v. International Game Tech.*, 184 F.3d 1339, 1354 (Fed. Cir. 1999); *Gustafson, Inc. v. Intersystems Indus. Prods. Inc.*, 897 F.2d 508, 510 (Fed. Cir. 1990); *Shaterproof Glass v. Libber-Owens Ford Co.*, 758 F.2d 628 (Fed. Cir. 1985). "There is no evidentiary presumption that every infringement is willful." *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 332 (Fed. Cir. 2004). "Willful infringement is not

³ The Federal Circuit has recently agreed to examine the standard of due care *en banc*.

established by the simple fact of infringement," even where the accused has knowledge of the patents. *Id.*

122. There is "no universal rule that to avoid willfulness, one must cease manufacture of a product immediately upon learning of a patent." *Gustafson*, 897 F.2d at 511. Rather, "[e]xercising due care, a party may continue to manufacture and may present what in good faith it believes to be a legitimate defense without risk of being found *on that basis alone* a willful infringer." *Crystal Semiconductor Corp.*, 246 F.3d at 1351 (quoting *Gustafson*, 897 F.2d at 511) (emphasis in original)). Even if an activity is later found to be infringing, this activity does not by itself establish willful infringement, especially if the party has a good faith belief in a legitimate defense. *Studiengesellschaft Kohle m.b.H. v. Dart Industries, Inc.*, 666 F.Supp. 674, 689 (D. Del. 1987), *aff'd*, 862 F.2d 1564 (Fed. Cir. 1988). The fact that an accused infringer discovered a patent-in-suit through its own diligence suggests that the party acted reasonably, not willfully. *Braun Inc. v. Dynamics Corp. of America*, 975 F.2d 815, 823 (Fed. Cir. 1992); *Studiengesellschaft Kohle m.b.H.*, 666 F.Supp. at 689.

123. The failure to obtain an exculpatory opinion of counsel cannot provide an adverse inference or evidentiary presumption that such an opinion would have been unfavorable. *Knorr-Bremse*, 383 F.3d at 1341-42.

124. The Court must weigh the totality of the circumstances in determining whether any infringement was willful. *Knorr-Bremse*, 383 F.3d at 1342. Willfulness of infringement is a finding of fact. *BIC Leisure Products, Inc.*, 1 F.3d at 1222. The Court recently recognized in *Tenneco Auto. Operating Co. v. Visteon Corp.*, 375 F. Supp. 2d 360, 365 (D. Del. 2005), that:

[t]he Federal Circuit has identified several factors that may be considered in determining whether infringement is willful: (1) whether the infringer deliberately copied the ideas or design of another; (2) whether the infringer, when he knew of the other's

patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed; (3) the infringer's behavior as a party to the litigation; (4) the defendant's size and financial condition; (5) closeness of the case; (6) the duration of defendant's misconduct; (7) remedial action taken by defendant; (8) defendant's motivation for harm; and (9) whether defendant attempted to conceal its misconduct. (citing *Read Corp v. Portec, Inc.*, 970 F.2d 816, 827 (Fed. Cir. 1992)).

125. Courts typically use the Read factors to determine if a case is exceptional, therefore, whether enhanced damages, including attorney's fees, are appropriate. *See, e.g., Metabolite Labs, Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1370-1371 (Fed. Cir. 2004); *Trista Technology, Inc. v. ICN Pharmaceuticals, Inc.*, 314 F. Supp. 2d 356, 360-63 (D. Del. 2004). Under the evidence in this case, even if the jury finds Illumina infringed the patents-in-suit, such infringement was not willful and Affymetrix is not entitled to enhanced damages.

L. Affymetrix Is Not Entitled to a Permanent Injunction

126. A plaintiff seeking a permanent injunction must satisfy a four factor test before a court may grant such relief. *eBay Inc. v. Mercexchange, L.L.C.*, 126 S.Ct. 1837, 1839 (2006). A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Id.*

127. A finding of infringement does not create a presumption of irreparable harm. *Paice LLC v. Toyota Motor Corp.*, No. 2:04-CV-211, 2006 WL 2385139, at *4 (E.D. Tex., Aug. 16, 2006); *z4 Technologies, Inc. v. Microsoft Corp.*, 434 F. Supp. 2d 437, 440 (E.D. Tex. 2006).

Instead, the plaintiff must meet its burden of demonstrating that it has suffered an irreparable injury. *Id.*

128. Infringing one's right to exclude alone is insufficient to establish that monetary damages are an inadequate remedy. *Paice*, 2006 WL 2385139 at *5.

M. Illumina Is Entitled to Recover Its Attorneys' Fees

129. A trial court may, in its discretion, award attorneys' fees in "exceptional" patent cases to the prevailing party. See 35 U.S.C. § 285.

130. "Exceptional cases are normally those involving bad faith litigation or those involving inequitable conduct by the patentee in procuring the patent." *Brasseler U.S.A. I, L.P. v. Stryker Sales Corp.*, 267 F.3d 1370, 1380 (Fed. Cir. 2001). "The prevailing party may prove exceptional case by showing: inequitable conduct before the PTO; litigation misconduct; vexatious, unjustified and otherwise bad faith litigation; a frivolous suit or willful infringement." *Id.*

131. In this case, the patents-in-suit were inequitably obtained, and Affymetrix has vexatiously and unjustifiably attempted to enforce these patents against Illumina. This conduct renders this case exceptional, and Illumina, not Affymetrix, is entitled to recover its attorneys' fees.

N. Affymetrix Engaged in Unfair Competition

132. To prove a violation of California's unfair competition law (the "UCL"), Illumina must prove that Affymetrix committed at least one of the following types of wrongful conduct: (1) an unlawful business act or practice; (2) an unfair business act or practice; (3) a fraudulent business act or practice; or (4) unfair, deceptive, untrue or misleading advertising. Cal. Bus. & Prof. Code § 17200. The UCL is disjunctive; each example of wrongful conduct operates separately from each other part. *Cel-Tech Communications, Inc. v. Los Angeles Cellular*

Telephone Co., 20 Cal.4th 163, 180 (1999). Moreover, even a single act of wrongful conduct is prohibited by the UCL. *Klein v. Earth Elements, Inc.*, 59 Cal.App.4th 965, 968-69 n. 3 (1997).

133. The unlawful prong of the UCL "borrows violations from other laws making them independently actionable as unfair competitive practices." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1143 (2003). Therefore, a business practice is unlawful under the UCL when it is "forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court made." *National Rural Telecommunications Cooperative v. Directv, Inc.*, 319 F.Supp.2d 1059, 1074 (C.D. Cal. 2003)(quoting *Saunders v. Superior Court*, 27 Cal.App.4th 832, 838-39 (Cal. App. 1994)). The federal law that can be borrowed to support a claim under the UCL includes federal antitrust law. See e.g., *Rambus, Inc. v. Infineon Tech. AG*, 304 F.Supp.2d 812, 820 (E.D. Vir. 2004) (refusing to dismiss UCL claim because plaintiff "had pleaded a legally sufficient claim under 15 U.S.C. § 2."); *Doe v. Abbott Labs.*, 04-1511, 2004 WL 3639688, at *5-6 (N.D. Cal. 2004, Oct. 21, 2004) ("If Plaintiffs have adequately plead their Sherman Act claims, section 17200 *et seq.* is triggered because the underlying unlawful activity is properly alleged.").

134. Courts define unfair businesses practices broadly. *National Rural Telecommunications Cooperative*, 319 F.Supp.2d at 1075. In the case of business competitors, business practices "that threaten[] an incipient violation of an antitrust law, or violate[] the policy or spirit of one of those laws because [their] effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition are forbidden" under this prong of the UCL. *Cel-Tech Comm., Inc.*, 20 Cal.4th at 187. A scheme to monopolize a technology market in violation of § 2 of the Sherman Act states a sufficient claim under the "unfair" prong of the UCL. *Rambus, Inc. v. Infineon Tech. AG*, 304 F.Supp.2d at 820.

135. A business practice is fraudulent within the meaning of the UCL if "members of the public are likely to be deceived." *Committee on Children's Television v. General Foods Corp.*, 35 Cal. 3d. 197, 211 (1983). Unlike common law fraud, the fraudulent prong of the UCL does not require actual deception, reasonable reliance and damage. *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824, 838 (2006); *Schnall v. Hertz Corp.*, 78Cal.App.4th 1144, 1167 (2000).

136. "[T]he remedies and penalties under the UCL are cumulative to other remedies and penalties." *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal.4th 553, 566 (1998). "[A] court of equity may exercise the full range of its inherent powers in order to accomplish complete justice between the parties, restoring if necessary the status quo ante as nearly as may be achieved." *People v. Sup. Ct.*, 9 Cal.3d. 282, 286 (1973).

137. Private litigants are entitled to restitution and injunctive relief under the UCL. Cal. Bus. & Prof. Code § 17203; *ABC Int'l Traders, Inc. v. Matsushita*, 14 Cal.4th 1247, 1270-71 (1997). Under the UCL, restitution includes "money or property that defendants took directly from plaintiff" or "money or property in which [the plaintiff] has a vested interest." *Korea Supply Co.*, 29 Cal.4th at 1146-47.

O. Affymetrix Intentionally Interfered With Illumina's Existing Contractual and Prospective Relations

138. To prove that Affymetrix intentionally interfered with its existing contractual relations, Illumina must prove that: (1) Illumina had an existing contract; (2) Affymetrix knew of this contract; (3) Affymetrix intended to disrupt the performance of this contract; (4) Affymetrix's conduct prevented Illumina's performance or made Illumina's performance more expensive or difficult; (5) Illumina was harmed; and (6) Affymetrix's conduct was a substantial

factor in causing Illumina's harm. *Quelimane Co., Inc. v. Stewart Title Guaranty Company*, 19 Cal.4th 26, 55 (1998)

139. Intentional interference with contractual relations "does not require that the defendant's primary purpose be disruption of the contract." *Id.* at 56. Rather, it is sufficient if the defendant "knows that the interference is certain or substantially certain to occur as a result of his action." *Id.*

140. It is not necessary to show that there was an actual breach of contract. *Pacific Gas and Electric Company v. Bear Stearns & Company*, 50 Cal.3d 1118, 1126-27 (1990). Instead, a defendant can be liable if its interference "makes enjoyment of a contract more expensive or burdensome. . . ." *Id.*

141. To prove that Affymetrix intentionally interfered with Illumina's prospective economic relations, Illumina must show that: (1) Illumina had an economic relationship with a probability of future economic benefit; (2) Affymetrix had knowledge of the relationship; (3) Affymetrix committed intentional, independently wrongful acts designed to disrupt the relationship; (4) actual disruption of Illumina's relationship; and (5) economic harm to Illumina proximately caused by Affymetrix. *Korea Supply Co.*, 29 Cal.4th at 1152-54. Conduct is independently wrongful when it is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." *Id.* at 1159.

142. An issue that remains to be litigated, is whether, in addition to compensatory damages, Illumina is entitled to punitive damages for Affymetrix's intentional interference. *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1443 (9th Cir. 1990) (affirming compensatory and punitive damage awards under California law for defendant's intentional interference with contractual relations).

143. Illumina does not need to prove the amount of damages it is entitled to with certainty. Instead, once the plaintiff establishes that it was damaged, courts should resort "to the best evidence available and fix[] damages accordingly." *Robi*, 918 F.2d at 1443 (citing *Hutcherson v. Alexander*, 164 Cal.App.2d 126, 135 (1968)).

144. Punitive damages are appropriate "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." Cal. Civ. Code § 3294(a). In these cases, "the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." *Id.*

145. Conduct is malicious when the defendant intended "to cause injury to the plaintiff or [consists of] despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Cal. Civ. Code § 3294(c)(1). Oppressive conduct "means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Cal. Civ. Code § 3294(c)(2). Fraudulent conduct "means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Cal. Civ. Code § 3294(c)(3).

EXHIBIT 6

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**AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS,
INCLUDING DESIGNATIONS OF INTERROGATORIES AND
ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL**

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
1	Certified US Patent No. 5,545,531		08/13/1996	copy at AVI_038924	AVI_038938			
2	Certified US Patent No. 5,795,716		08/18/1998	copy at AVI_039650	AVI_039699			
3	Certified US Patent No. 6,355,432		03/12/2002	copy at AVI_043790	AVI_043844			
4	Certified US Patent No. 6,399,365		06/04/2002	copy at AVI_044227	AVI_044286			
5	Certified US Patent No. 6,646,243		11/11/2003	copy at AVI_047056	AVI_047106			
6	File History for US Patent No. 5,545,531			AVI_001864	AVI_001984			
7	File History for US Patent No. 5,795,716			AVI_000001	AVI_000429			
8	File History for US Patent No. 6,355,432			AVI_001341	AVI_001863			
9	File History for US Patent No. 6,399,365			AVI_001051	AVI_001340			
10	File History for US Patent No. 6,646,243			AVI_000731	AVI_001985			
11	Illumina BeadLab System Manual Rev. E	PX 201	09/02/2004	IAFP00010319	IAFP00011208			
12	Illumina BeadArray Reader User Guide Rev. A	PX 202	08/18/2004	IAFP00011520	IAFP00011615			
13	Illumina BeadStation 500X Gene Expression System Rev. B	PX 266	10/15/2004	IAFP00010209	IAFP00010268			
14	Illumina Gene Expression on Sentrix Arrays Direct Hybridization System Manual - Array Matrix Rev. B	PX 271	11/14/2003	IAFP00632951	IAFP00633090			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
15	Illumina Genotyping System Manual Rev. B	PX 603	00/00/2003	IAFP00472418	IAFP00473195			
16	Illumina Infinium I Assay System Manual Rev. B	PX 605	11/04/2005	IAFP00642663	IAFP00643108			
17	Illumina Infinium Assay System Manual Rev. A - Errata	PX 606	00/00/0000	IAFP00643109	IAFP00643112			
18	Illumina Gene Expression on Sentrix Arrays - DASL Assay System Manual Rev. A	PX 609	01/26/2005	IAFP00642477	IAFP00642662			
19	Illumina BeadStation 500G System Manual Rev. B	PX 614	04/04/2005	IAFP00642129	IAFP00642476			
20	Illumina Hybridization Oven Operating Instructions Model 5420 with BeadChip Hyb Wheel		00/00/2004	IAFP00010277	IAFP00010316			
21	Illumina BeadStudio X User Guide		08/27/2004	IAFP00543653	IAFP00543804			
22	Illumina Sherlock 1000 Array Scanning System User Guide		00/00/2002	IAFP00569671	IAFP00569729			
23	Illumina BeadLab System Site & Facility Pre-Installation Guide		00/00/2003	IAFP00590786	IAFP00590821			
24	Information for Topic 3	PX 9	00/00/0000					
25	Illumina Catalog List 2004	PX 10	02/21/2005	IAFP00496472	IAFP00496526			
26	Employee Time Charged by Project	PX 14	00/00/2001	IAFP00022393	IAFP00022436			
27	Employee Time Charged by Project	PX 15	00/00/2002	IAFP00022437	IAFP00022474			
28	Employee Time Charged by Project	PX 16	00/00/2003	IAFP00022475	IAFP00022512			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
29	Notebook No. 00023 Issued to Jian-Bing Fan	PX 31	06/21/1999	IAFP00469703	IAFP00469941			
30	Notebook No. 00037 Issued to Jian-Bing Fan	PX 32	11/15/1999	IAFP00584093	IAFP00584290			
31	Notebook No. 00065 Issued to Jian-Bing Fan	PX 33	04/04/2000	IAFP00584291	IAFP00584347			
32	Email re: Target Quality Controls	PX 35	04/09/2002	IAFP00556298	IAFP00556300			
33	Highly Parallel SNP Genotyping	PX 37	00/00/2003	IAFP00583892	IAFP00583901			
34	BeadArray-Based Solutions for Enabling the Promise of Pharmacogenomics	PX 39	10/00/2005					
35	Email re: RE: Chip Data Analysis Question	PX 43	04/01/1999	IAFP00589242	IAFP00589242			
36	Email re: tag sequences	PX 44	04/25/2000	IAFP00560600	IAFP00560600			
37	Email re: RE: PM over MM with Affy	PX 45	05/14/2002	IAFP00556078	IAFP00556078			
38	Email re: probe selection paper from Affymetrix	PX 46	12/18/2003	IAFP00555360	IAFP00555360			
39	Probe selection for high-density oligonucleotide arrays	PX 47	09/30/2003	IAFP00555361	IAFP00555366			
40	Parallel Genotyping of Human SNPs Using Generic High-density Oligonucleotide Tag Arrays	PX 48	00/00/0000	IAFP00558370	IAFP00558377			
41	Performance Review Self Assessment for Kevin L. Gunderson	PX 50	12/03/1997	AVI_134236	AVI_134237			
42	Employee Time Charged by Project	PX 55	00/00/2004	IAFP00022513	IAFP00022566			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
43	Notebook No. 00046 Issued to Kevin Gunderson	PX 57	01/19/2000	IAFP00468538	IAFP00468734			
44	Notebook No. 00113 Issued to Kevin Gunderson	PX 58	10/19/2000	IAFP00468735	IAFP00468930			
45	Grant Application for Representational analysis of DNA copy number / methylation	PX 61	12/02/2002	IAFP00571878	IAFP00571905			
46	Illumina Project Eureka Concept Plan	PX 63	10/06/2003	IAFP00548363	IAFP00548376			
47	Illumina PowerPoint Presentation - Infinium Assay Whole Genome Genotyping	PX 67	00/00/0000	IAFP00616484	IAFP00616518			
48	Whole Genome Genotyping Update	PX 68	07/09/2003	IAFP00554653	IAFP00554663			
49	Randomly-Assembled BeadArrays: Genomic and Proteomic Applications	PX 69	00/00/0000	IAFP00554113	IAFP00554187			
50	Email re: FYI: Affy's genotyping algorithms	PX 71	01/07/2004	IAFP00517099	IAFP00517099			
51	Email re: Annotation files for Affy HG U133P2.0	PX 74	11/11/2004	IAFP00547244	IAFP00547244			
52	List of nGenetics Inventions and Original Works of Authorship	PX 83	00/00/1998	IAFP00571419	IAFP00571419			
53	Illumina PowerPoint Presentation - CyVera Transaction	PX 163	10/06/2004	IAFP00590112	IAFP00590127			
54	Illumina PowerPoint Presentation - From Whole Genome to Targeted Analysis: An Integrated Platform for Genotyping and Gene Expression	PX 170	00/00/0000	IAFP00546077	IAFP00546108			
55	Illumina PowerPoint Presentation - Leading Edge Sales Meeting	PX 171	04/00/2005	IAFP00541260	IAFP00541444			
56	Laboratory Notebook No. 00099 issued to Francisco Garcia	PX 184	08/21/2000	IAFP00626908	IAFP00626960			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
57	GenCall Version	PX 185	00/00/0000	IAFP00550588	IAFP00550616			
58	Illumina Signs Genotyping Services Agreement with Investigators at Boston University	PX 186	00/00/0000	AVI_141814	AVI_141814			
59	Illumina Signs Genotyping Services Agreement with GlaxoSmithKline	PX 187	00/00/0000	AVI_141821	AVI_141821			
60	Illumina Signs Genotyping Services Agreement with Johns Hopkins Medical University	PX 188	00/00/0000	AVI_141816	AVI_141816			
61	Large-Scale SNP Genotyping on Random Arrays	PX 190	05/03/2002	IAFP00610110	IAFP00610188			
62	Illumina PowerPoint Presentation - Genotyping Bead Arrays GenCall (Genotype Caller Program)	PX 191	11/07/2001	IAFP00507719	IAFP00507773			
63	Illumina Atlas - Development Phase Design Verification Testing Peer Technology Review Pre-read	PX 192	02/04/2003	IAFP00590053	IAFP00590107			
64	BeadStation 500G GenCall - Creating Clusters & Calling Genotypes	PX 200	00/00/0000	IAFP00009250	IAFP00009296			
65	Email re: RE: Affy BeadChip misregistered image	PX 203	08/25/2003	IAFP00550894	IAFP00550894			
66	Email re: LOH and arrayCGH etc	PX 204	07/08/2005	IAFP00581675	IAFP00581676			
67	Email re: affy_spike_info.xls	PX 205	06/11/2003	IAFP00556342	IAFP00556346			
68	Email re: The age old question...	PX 206	05/03/2004	IAFP00552322	IAFP00552326			
69	Self-Assembled Random Arrays: High-performance imaging and genomics applications on a high-density microarray platform	PX 247	00/00/0000	IAFP00532343	IAFP00532353			
70	Illumina PowerPoint Presentation - Multi-Sample Gene Expression: From whole genomes to focused gene sets; using fresh or fixed-	PX 267	00/00/0000	IAFP00496330	IAFP00496390			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
71	Illumina Gene Expression Profiling - Gene Expression profiling on Multi-Array Sentrix BeadChips	PX 269	00/00/0000					
72	Illumina 16/96/384 Array Matrix Concept Plan Revision 0.5	PX 273	02/01/2000	IAFP00533196	IAFP00533205			
73	Email re: RE: important - please respond	PX 288	03/30/2004	IAFP00555540	IAFP00555542			
74	Illumina Systems, Products and Services Catalog 2005	PX 296	10/03/2005	IAFP00640163	IAFP00640172			
75	Decoding Randomly Ordered DNA Arrays	PX 322	01/29/2005	AVI_118352	AVI_118359			
76	Email re: REVIEW new Genotyping Service Model	PX 323	05/14/2004	IAFP00583557	IAFP00583589			
77	Illumina PowerPoint Presentation - An Integrated Array Platform for Genetic Analysis	PX 335	00/00/0000	IAFP00585224	IAFP00585310			
78	Email re: FW: Update on 100k chip presentation in Affymetrix Workshop	PX 341	04/07/2004	IAFP00467591	IAFP00467591			
79	Affymetrix Workshop HUGO	PX 342	04/07/2004	IAFP00467592	IAFP00467592			
80	Encoding methods for combinatorial chemistry	PX 385	00/00/1997	AVI_201349	AVI_201355			
81	Biographical Sketch of Mark Stephen Chee	PX 400	00/00/0000	IAFP00571411	IAFP00571412			
82	Large-Scale Identification, Mapping, and Genotyping of Single-Nucleotide Polymorphisms in the Human Genome	PX 401	05/15/1998	AVI_003362	AVI_003367			
83	Expression monitoring by hybridization to high-density oligonucleotide arrays	PX 402	12/14/1996	IAFP00005705	IAFP00005710			
84	Accessing Genetic Information with High-Density DNA Arrays	PX 403	10/25/1996	AVI_002128	AVI_002133			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
85	E-mail re: Lend me your ears	PX 407	07/01/1997	IAFP00634121	IAFP00634124			
86	Illumina Website - History	PX 412	00/00/0000	AVI_141861	AVI_141861			
87	Background on Illumina	PX 413	00/00/0000	IAFP00567197	IAFP00567200			
88	Illumina Business Plan Outline	PX 415	00/00/0000	CHEE037630	CHEE037662			
89	Email re: directions on merit evaluations and compensation for Illumina's employees	PX 416	06/16/1999	CHEE045899	CHEE045900			
90	Illumina Website - Management	PX 426	00/00/0000	AVI_141862	AVI_141866			
91	Illumina Atlas - Development Phase Design Verification Testing Peer Technology Review Pre-read	PX 427	02/04/2003	IAFP00639429	IAFP00639483			
92	Grant Application for Development of a Multi-State Decoding Framework	PX 429	04/01/2004	IAFP00595240	IAFP00595293			
93	Phase I Grant Application for Randomly Ordered DNA Arrays for SNP Genotyping	PX 430	08/14/1998	IAFP00572121	IAFP00572147			
94	Application for Continuation Grant for Randomly Ordered DNA Arrays for SNP Genotyping	PX 431	09/11/2000	IAFP00572190	IAFP00572204			
95	Application for Continuation Grant for Randomly Ordered DNA Arrays for SNP Genotyping	PX 432	06/29/2001	IAFP00572205	IAFP00572215			
96	Draft Grant Application	PX 434	00/00/0000	CHEE046460	CHEE046475			
97	Letter re: 1 R01 HG01911-01	PX 435	08/24/1998	IAFP00639910	IAFP00639919			
98	Handwritten Notes	PX 438	00/00/0000	IAFP00633299	IAFP00633308			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
99	Handwritten Notes	PX 439	00/00/0000	IAFP00594127	IAFP00594140			
100	Email re: Conference call with John Quackenbush	PX 443	01/24/2003	IAFP00634151	IAFP00634151			
101	Email re: FW: Lockhart's talk	PX 445	11/01/1999	CHEE010112	CHEE010112			
102	Email re: david lockhart offer letter - updated	PX 446	02/06/2000	CHEE021824	CHEE021824			
103	Email re: imaging system	PX 447	06/14/1999	CHEE045995	CHEE045996			
104	Illumina PowerPoint Presentation - High-Throughput Expression Profiling with BeadArray Technology	PX 452	00/00/0000	IAFP00011676	IAFP00011728			
105	Email re: Affy Clone instructions_TM_edits.doc	PX 463	07/09/2003	IAFP00556308	IAFP00556308			
106	Email re: RE: Poly(A) spike manual supplement	PX 465	07/09/2003	IAFP00556497	IAFP00556498			
107	Email re: RE: Affy and Probe design	PX 466	02/26/2004	IAFP00555687	IAFP00555687			
108	High-throughput SNP genotyping on universal bead arrays	PX 494	07/07/2004	IAFP00532479	IAFP00532490			
109	Illumina PowerPoint Presentation - Genotyping via GenTrain / GenCall	PX 498	07/17/2002	IAFP00507466	IAFP00507523			
110	Email re: affyread error	PX 500	04/06/2005	IAFP00516853	IAFP00516856			
111	Email re: Thank you - LOH analysis software discussion	PX 501	10/07/2004	IAFP00517082	IAFP00517083			
112	Illumina Catalog List 2003 - document produced live (live and paper copy may be offered)	PX 509	02/17/2006					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
113	Notice of Deposition of Illumina, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6)	PX 600	12/22/2005					
114	Illumina Systems, Products and Services Catalog 2005	PX 601	12/01/2005	IAFP00641957	IAFP00641978			
115	Claim Construction Memorandum Opinion	PX 675	08/16/2006					
116	Notebook No. 19 Issued to William Dower	DX 123	01/12/1990	AVI_138595	AVI_138694			
117	Notebook No. 20 Issued to William dower		06/12/1989	AVI_138695	AVI_138755			
118	Notebook No. 31 Issued to William Dower		09/01/1989	AVI_139053	AVI_139118			
119	Curriculum Vitae for Richard Patrick Rava	DX 245	00/00/0000	AVI_196069	AVI_196074			
120	Design Input Requirements - Cartridge Barcode Design Input Requirements	DX 248	04/01/2002	AVI_135052	AVI_135058			
121	High Capacity Substrates for DNA Probe Arrays	DX 373	00/00/0000	AVI_134606	AVI_134635			
122	Claim Construction Order	DX 604	08/16/2006					
123	Notebook No. 447 Issued to Mark Chee (by KK)		08/05/1992	AVI_140004	AVI_140102			
124	Notebook No. 663 Issued to Mark Chee		07/20/1994	AVI_140230	AVI_140328			
125	Notebook No. 77X Issued to Mark Chee		11/09/1993	AVI_139404	AVI_139502			
126	Notebook No. 111X Issued to Mark Chee		04/04/1994	AVI_139503	AVI_139599			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
127	Notebook No. 136X Issued to Mark Chee		07/05/1995	AVI_139600	AVI_139697			
128	Notebook No. 196 Issued to Mark Chee		04/00/1995	AVI_075559	AVI_075659			
129	Notebook No. 223 Issued to Mark Chee		09/00/1995	AVI_141870	AVI_141976			
130	Notebook No. 00005 issued to Mark Chee	PX 417	08/00/2004	IAFP00468305	IAFP00468343			
131	Future Medicine Company Profile - Illumina Inc.		00/00/2005	AVI_212370	AVI_212375			
132	Illumina SNP Genotyping - Randomly Assembled Arrays: Applications to SNP Genotyping (Illumina Poster Presentation, 2001		00/00/2001	IAFP00508217	IAFP00508217			
133	Product & Technology Report - BeadArray Technology: Enabling an Accurate, Cost-Effective Approach to High-Throughput Genotyping		06/00/2002	AVI_118599	AVI_118603			
134	Illumina Power Point Presentation - Genotyping via GenTrain / Gen Call		07/17/2002	IAFP00507221	IAFP00507278			
135	Illumina Systems and Software - Illumina BeadScan 3.2 Software		00/00/2006	AVI_214162	AVI_214163			
136	Illumina SNP Genotyping - GoldenGate Assay Workflow		00/00/2004	IAFP00550850	IAFP00550851			
137	Settlement and Cross License Agreement between Applera Corporation and Illumina		08/18/2004	IAFP00644018	IAFP00644034			
138	A genome-wide scalable SNP genotyping assay using microarray technology		04/17/2005	AVI_118360	AVI_118385			
139	Genetic Variance Detection Technologies for Pharmacogenomics Chapter 10 - Whole Genome Genotyping on		00/00/0000	AVI_212395	AVI_212410			
140	Illumina SNP Genotyping - Infinium Assay Workflow		00/00/2005	AVI_212368	AVI_212369			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
141	Illumina Web Page - Infinium Whole Genome Genotyping		00/00/2006	AVI_212464	AVI_212468			
142	Curriculum Vitae of Rudy Guerra							
143	Research Plan		00/00/0000	IAFP00639881	IAFP00639907			
144	Odyssey Program Update - Illumina Board Meeting		10/22/2002	IAFP00536340	IAFP00536355			
145	Email re: RE: candidate evaluation for Jian-Bing Fan		04/12/1999	CHEE031523	CHEE031523			
146	Email re: receipt of offer and letter and questions regarding getting more shares of stock		04/20/1999	CHEE031522	CHEE031522			
147	Email re: RE: hapmap assays		04/30/2004	IAFP00547643	IAFP00547644			
148	1997-1998 Performance Review Assessment for Kevin L. Gunderson		12/02/1997	IAFP00012001	IAFP00012002			
149	Draft Specifications		06/05/1999	CHEE029664	CHEE029667			
150	Email re: Gunderson leaving Affymetrix for Illumina		09/22/1998	AVI_081696	AVI_081696			
151	Illumina PowerPoint Presentation - Corporate Overview		03/03/2000	IAFP00606648	IAFP00606688			
152	October 24 Offsite Action Items		10/00/2004	IAFP00570858	IAFP00570859			
153	Illumina PowerPoint Presentation - Density evolution (or, how do we shrink Affy)		07/00/2005	IAFP00570724	IAFP00570733			
154	Email re: RE: gene_flat_file_definition_draft053102.xls		06/02/2002	IAFP00547641	IAFP00547642			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
155	Illumina PowerPoint Presentation - A genome-wide scalable SNP genotyping assay using microarray technology (HUGO's 10th Human		04/18/2005	IAFP00516609	IAFP00516635			
156	Email re: Important please respond - list of the content on the Affy Hu133 chips?		03/29/2004	IAFP00555230	IAFP00555230			
157	Genotyping with generic tag chip and single base extension (SBE)		05/18/1999	IAFP00560581	IAFP00560584			
158	Email re: FW: Affy3000 7G info		07/29/2005	IAFP00588631	IAFP00588631			
159	Email re: Mark		01/12/2004	IAFP00585502	IAFP00585503			
160	Odyssey Meeting Minutes		00/00/0000	IAFP00536574	IAFP00536577			
161	Illumina Acronyms		00/00/0000	IAFP00480195	IAFP00480198			
162	Email re: Congratulations to Jian-Bing Fan		04/18/2000	IAFP00558649	IAFP00558649			
163	Email re: RE: dynamic range of detection		10/04/2001	IAFP00547607	IAFP00547609			
164	Email re: RE: Thanks again		11/14/2001	IAFP00556195	IAFP00556196			
165	Bound Original of "Pioneering an Industry"		00/00/0000	copy at AVI_211119	AVI_211143			
166	Photographs of Illumina Products - taken by Dan Reed at Kirkland & Ellis		10/14/2005	ILPRD0001	ILPRD0026			
167	Photographs of Illumina Products - taken by Dan Reed at Kirkland & Ellis		12/15/2005	ILPRD0027	ILPRD0040			
168	Journal of Medical Chemistry Perspective - Applications of Combinatorial Technologies to Drug Discovery. 1. Background and		04/29/1994	IAFP00006653	IAFP00006671			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
169	Journal of Medical Chemistry Perspective - Applications of Combinatorial Technologies to Drug Discovery. 2. Combinatorial Organic		05/13/1994	IAFP00654288	IAFP00654304			
170	Generation and screening of an oligonucleotide-encoded synthetic peptide library		11/00/1993	AVI_214157	AVI_214161			
171	Membrane Insertion Defects Caused by Positive Charges in the Early Mature Region of Protein pIII of Filamentous Phage fd Can Be		07/00/1994	AVI_214136	AVI_214145			
172	BeadArray Technology: Enabling an Accurate Cost-Effective Approach to High-Throughput Genotyping		06/00/2002	AVI_118599	AVI_118603			
173	Highly parallel genomic assays		08/00/2006	IAFP00659359	IAFP00659371			
174	Original "Light-Directed, Spatially Addressable Parallel Chemical Synthesis"		02/15/1991	copy at AVI_003210	AVI_003216			
175	Illumina PowerPoint Presentation - Pacific Growth Equities 2005 Life Sciences Growth Conference		06/07/2005	IAFP00630747	IAFP00630802			
176	Illumina Gene Expression Profiling Technical Bulletin - RNA Profiling with the DASL Assay		00/00/2005	AVI_212423	AVI_212430			
177	Illumina Gene Expression Profiling - Sentrix Human-6 Expression Bead Chip		00/00/2005	IAFP00022571	IAFP00022574			
178	Illumina Gene Expression Profiling Technology Spotlight - DASL Assay vs. Direct Hybridization		00/00/2005	AVI_212417	AVI_212418			
179	Illumina Systems & Software - Illumina BeadArray Reader		00/00/2003	AVI_211610	AVI_211611			
180	Illumina Web Page - Array Assembly & Manufacturing		00/00/0000	AVI_212460	AVI_212460			
181	Illumina Web Page - Technology Platform		00/00/0000	AVI_212458	AVI_212459			
182	Illumina SNP Genotyping - Sentrix HumanHap300 Genotyping Beadchip		00/00/2006	AVI_212433	AVI_212436			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
183	Illumina Web Page - Sentrix HumanHap240S Genotyping Beadchip		00/00/0000	AVI_212462	AVI_212463			
184	Illumina Gene Expression Profiling Technical Bulletin - Gene Expression Profiling with Sentrix Focused Arrays		00/00/2005	AVI_212447	AVI_212454			
185	Order Construing Claims of US Patents Nos. 5,445,934, 5,744,305, 5,800,992, and 5,795,716 in Affymetrix v. Hyseq		01/22/2001	AVI_098006	AVI_098041			
186	Illumina SNP Genotyping - Sentrix Human1 Genotyping BeadChip		00/00/2005	AVI_212437	AVI_212440			
187	Illumina Gene Expression Profiling - Sentrix Mouse-6 and MouseRef-8 Expression BeadChips		00/00/2006	AVI_212443	AVI_212446			
188	Illumina Web Page - Sentrix Arrays		00/00/0000	AVI_211603	AVI_211603			
189	Illumina Web Page - Beadscan 3.0 Data Acquisition Software for Beadarray Reader		00/00/0000	AVI_212455	AVI_212457			
190	Illumina Systems & Software - BeadStation 500G Genotyping System		00/00/2004	AVI_212413	AVI_212416			
191	Illumina PowerPoint Presentation - Commercial Services - Sr. Staff Update		06/27/2005	IAFP00583805	IAFP00583820			
192	Illumina Web Page - Frequently Asked Questions: Genotyping Services expanded		00/00/2006	http://www.illumina.com/support/support_faqs.ilmn				
193	Illumina Gene Expression Profiling - DASL Assay for RNA Profiling with Paraffin-Embedded Samples		00/00/2005	AVI_212419	AVI_212422			
194	Cold Spring Harbor Symposia on Quantitative Biology - Highly Parallel SNP Genotyping by Fan, et al.		00/00/2003	IAFP00532361	IAFP00532370			
195	A Versatile Assay for High-Throughput Gene Expression Profiling on Universal Array Matrices		00/00/2004	IAFP00532371	IAFP00532378			
196	Illumina Gene Expression Profiling - Sentrix HumanRef-8 Expression BeadChip		00/00/2005	IAFP00541256	IAFP00541259			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
197	Illumina Gene Expression Profiling Technical Bulletin - Whole-Genome Expression Analysis Using the Sentrix Human-6 and HumanRef-8		00/00/2005	IAFP00541244	IAFP00541251			
198	Notebook No. 26 Issued to Stephen Fodor		07/20/1989	AVI_138964	AVI_139052			
199	Supplement to Notebook No. 26 Issued to Stephen Fodor		11/16/1989	AVI_138756	AVI_138963			
200	Notebook No. 44 Issued to Stephen Fodor		12/21/1989	AVI_139119	AVI_139216			
201	Notebook No. 48 Issued to Stephen Fodor		01/11/1990	AVI_139217	AVI_139318			
202	Notebook No. 909 Issued to Stephen Fodor		09/22/1993	AVI_140514	AVI_140524			
203	Curriculum Vitae of Kevin Struhl							
204	Email re: Jim Wolpert	PX 155	03/11/2004	IAFP00616218	IAFP00616218			
205	Email re: Bio-ITWorld: RFID Tags	PX 252	01/18/2005	IAFP00535505	IAFP00535505			
206	Email re: The Reverse Spin on Markham Decision...attaching Court Ruling Strengthens Affymetrix Patent Estate	PX 359	01/26/2001	IAFP00467001	IAFP00467003			
207	Affymetrix Granted Significant Patent on Array Readers	PX 361	05/02/2001	IAFP00466927	IAFP00466927			
208	Email re: Affx's patent press release	PX 378	04/06/2004	IAFP00558211	IAFP00558212			
209	Email re: CEO Visit Comments	PX 444	08/31/1999	CHEE023543	CHEE023544			
210	Candidate Appraisal Form for Nicky Espinosa	PX 499	03/15/2000	IAFP00516121	IAFP00516121			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
211	Email re: FW: Affx's patent press release	PX 526	04/06/2004	IAFP00467595	IAFP00467596			
212	Curriculum Vitae of George M. Gould							
213	Curriculum Vitae of Matthew R. Lynde, Ph.D.							
214	Exhibits 1 - 17, 19 to the Expert Report of Matthew R. Lynde, Ph.D.	PX 661	00/00/0000					
215	Lynde Report Exhibit 1 - Summary of Damages Analyses 2002-2007 (in thousands)		00/00/0000					
216	Lynde Report Exhibit2 - Lost Sales Capacity Analysis 2002-2007 (in thousands)		00/00/0000					
217	Lynde Report Exhibit 3 - Instrument Production: Illumina vs. Affymetrix 2002-2005		00/00/0000					
218	Lynde Report Exhibit 4 - Affymetrix Array Production: Incremental Capacity Analysis 2002-2005		00/00/0000					
219	Lynde Report Exhibit 5 - Illumina Revenue Summary 2002-2007 (in thousands)		00/00/0000					
220	Lynde Report Exhibit 6 - Universal Array Revenue Allocation 2004-2005 (in thousands)		00/00/0000					
221	Lynde Report Exhibit 7 - GoldenGate Reagent Revenue Allocation 2002-2005 (in thousands)		00/00/0000					
222	Lynde Report Exhibit 8 - Illumina Revenue Comparison 2002-2005 (in thousands)		00/00/0000					
223	Lynde Report Exhibit 9 - Illumina Array Revenue 2002-2007 (in thousands)		00/00/0000					
224	Lynde Report Exhibit 10 - Revenue Apportionment 2002-2007		00/00/0000					

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225	Lynde Report Exhibit 11 - Incremental Revenue 2002-2007 (in thousands)		00/00/0000					
226	Lynde Report Exhibit 12 - Affymetrix Gross Margin 2002-2007		00/00/0000					
227	Lynde Report Exhibit 13 - Affymetrix Factors of Production 2002-2007 (in thousands)		00/00/0000					
228	Lynde Report Exhibit 14 - Variable Component of SG&A 2002-2007 (in thousands)		00/00/0000					
229	Lynde Report Exhibit 15 - Affymetrix Incremental Margin Analysis 2002-2007		00/00/0000					
230	Lynde Report Exhibit 16 - Affymetrix Lost Profit Damages 2002-2007 (in thousands)		00/00/0000					
231	Lynde Report Exhibit 17 - Reasonable Royalty Damages 2002-2007 (in thousands)		00/00/0000					
232	Lynde Report Exhibit 19 - Affymetrix Arrays: Gross Margin Analysis 2003-2006		00/00/0000					
233	License Agreement between Affymetrix, Inc. and Molecular Dynamics, Inc.	PX 369	11/28/1997	AVI_145024	AVI_145052			
234	License Agreement between Affymetrix, Inc. and NEN Life Science Products, Inc.	DX 529	04/01/2000	AVI_203658	AVI_203681			
235	License Agreement between Affymetrix, Inc. and MWG - Biotech AG	DX 518	06/01/2000	AVI_199711	AVI_199734			
236	Amendments 1-4 to License Agreement between Affy and MWG Biotech		00/00/0000	AVI_199735	AVI_199742			
237	License Agreement between Affymetrix, Inc. and Takara Shuzo		09/05/2000	AVI_089526	AVI_089550			
238	First Amendment To License Agreement between Affymetrix and Takara Bio, Inc.	DX 527	09/28/2000	AVI_208412	AVI_208420			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
239	License Agreement between Affymetrix, Inc. and Genomic Solutions, Inc.	PX 685	12/28/2000	AVI_204305	AVI_204331			
240	License Agreement between F. Hoffman-La Roche and Affymetrix		01/29/2003	AVI_208202	AVI_208241			
241	Amendment 1 to License Agreement between F. Hoffman-La Roche and Affymetrix		12/21/2004	AVI_208268	AVI_208280			
242	License Agreement between Affymetrix, Inc. and Spectral Genomics, Inc.	DX 235	09/18/2003	AVI_089500	AVI_089522			
243	Letter re: First Amendment to the License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral Genomics, Inc. ("SGI")		07/15/2005	AVI_210579	AVI_210584			
244	Diagnostic License Agreement between Affymetrix, Inc. and Spectral Genomics, Inc.		01/01/2004	AVI_199743	AVI_199762			
245	Letter re: Amendment to the Diagnostic License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral		03/30/2005	AVI_210571	AVI_210572			
246	Letter re: Second Amendment to the Diagnostic License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral		07/15/2005	AVI_210573	AVI_210578			
247	Commercial Use License Agreement between Affymetrix, Inc. and Applera Corporation	DX 238	12/20/2005	AVI_145080	AVI_145105			
248	Commercial Use License Agreement between Affymetrix, Inc. and Abbott Molecular Inc.	DX 511	03/30/2006	AVI_201863	AVI_201892			
249	Commercial Use License Agreement between Affymetrix, Inc. and Invitrogen Corporation		04/27/2006	AVI_208094	AVI_208128			
250	Commercial Use License Agreement between Affymetrix, Inc. and Nimblegen Systems, Inc.	PX 687	09/26/2006	AVI_212475	AVI_212503			
251	Patent License Agreement between Isis Innovation Limited and Beckman Instruments, Inc.	DX 502	04/17/1996	AVI_203606	AVI_203634			
252	Settlement Agreement between Oxford Gene Technology Limited, Oxford Gene Technology IP Limited, Oxford Gene Technology Ltd. And	DX 501	03/23/2001	AVI_201356	AVI_201377			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
253	Agreement between Oxford Gene Technology Limited, Oxford Gene Technology IP Limited, Oxford Gene Technology Ltd. And Edwin M.	DX 503	05/28/2004	AVI_201378	AVI_201386			
254	OGT Payment Summary	DX 344	00/00/2002					
255	The TR Patent Scorecard 2002		05/00/2002	AVI_211659	AVI_211661			
256	GM spreadsheets - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00641507A-R	IAFP00641507A-R			
257	The TR Patent Scorecard 2004 - Excel Workbook containing 8 industry spreadsheets	DX 608	00/00/2004	AVI_212376	AVI_212394			
258	Illumina "GM" Spreadsheets - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643324	IAFP00643325			
259	2003 SalesLogArchive S.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643327	IAFP00643330			
260	Journal Entry Report.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643966	IAFP00643966			
261	2005 Revenue Summary-PRELIM.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643320	IAFP00643323			
262	GM Reagents 2005 FS - March - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00641507	IAFP00641507			
263	Revenue Summary By Quarter	PX 507	00/00/2002	IAFP00544980	IAFP00545091			
264	Tom Deposition Exhibit 508	PX 508	00/00/0000					
265	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 512	00/00/0000	IAFP00643326	IAFP00643326			
266	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 513	00/00/0000	IAFP00643326	IAFP00643326			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
267	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 523	00/00/0000	IAFP00643326	IAFP00643326			
268	Gross Margin Instrument FS.xls file	PX 514	00/00/0000					
269	GM Instruments 2004FS.xls file	PX 515	00/00/0000					
270	Strategic Plan Target - originally produced as a live document and part of 5 yr pl model - document produced live (live and paper copy	PX 517	00/00/0000	IAFP00643265	IAFP00643265			
271	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 525	00/00/0000	IAFP00643326	IAFP00643326			
272	GM Arrays 2004 FS.xls(MAR)	PX 584	00/00/0000					
273	ITEM - SYSTEM - PRODUCT Combination Reassigned to Product Categories		09/22/2006					
274	Product Map Variable Guide		09/22/2006					
275	ITEM - KEY Matches With Assigned Categories		09/22/2006					
276	General Rules for Product Mapping		09/22/2006					
277	Illumina Product Mapping Assumptions		09/22/2006					
278	Illumina_Sales.pdf (382 page document)		09/22/2006					
279	License Agreement between Tufts University and Illumina, Inc.	PX 347	05/06/1998	IAFP00022372	IAFP00022389			
280	Amendment No. 1 to License Agreement between Tufts University and Illumina, Inc.	PX 349	07/22/1998	IAFP00022390	IAFP00022390			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
281	Amendment to License Agreement between Tufts University and Illumina, Inc.	PX 350	11/28/2001	IAFP00022391	IAFP00022392			
282	Tufts University Sponsored Research Agreement between Illumina, Inc. and Tufts University	PX 348	07/22/1998	TU000033	TU000044			
283	Amendment to Tufts University Sponsored Research Agreement between Illumina, Inc. and Trustees of Tufts College	PX 351	10/01/1999	TU000046	TU000046			
284	Letter re: agreement between David K. Walt and Illumina, Inc. regarding right to purchase stock	PX 81	04/23/1998	DW000815	DW000816			
285	Consulting Agreement between Illumina, Inc. and David R. Walt	PX 82	04/30/1998	IAFP00022351	IAFP00022360			
286	Illumina, Inc. Restricted Stock Purchase Agreement	PX 94	04/30/1998	DW000827	DW000835			
287	License Agreement between Torrey Pines Institute for Molecular Studies and Spyder Instruments, Inc.	PX 358	11/10/1994	IAFP00613354	IAFP00613369			
288	Chip Sales Detail - document produced live (live and paper copy may be offered)	DX 323	00/00/0000	AVI_196154	AVI_196154			
289	Instrument Sales Detail - document produced live (live and paper copy may be offered)	DX 324	00/00/0000	AVI_196157	AVI_196157			
290	Part to Product Mapping - document produced live (live and paper copy may be offered)	DX 328	00/00/0000					
291	Chip and Instrument Revenues and Costs Excluding Variances	DX 332	00/00/0000	AVI_196156	AVI_196156			
292	Factors of Production	DX 334	00/00/0000					
293	Instrument Production 2002-2005	DX 337	00/00/2005	AVI_196159	AVI_196159			
294	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002 to 2005	DX 339	00/00/2005					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
295	Historical Equivalent Chip Output and Additional Capacity Available By Quarter 2002 to 2005	DX 600	00/00/2005	AVI_208735	AVI_208735			
296	Total Demand Spreadsheet - document produced live (live and paper copy may be offered)		00/00/0000	AVI_201784	AVI_201808			
297	Q1 2006 Inventory - document produced live (live and paper copy may be offered)		00/00/0000	AVI_208706	AVI_208715			
298	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002 to 2005 (Array Capacity) - document produced live		00/00/0000	AVI_201538	AVI_201538			
299	Part to Product Mapping - document produced live (live and paper copy may be offered)		00/00/0000	AVI_201541	AVI_201541			
300	Historical Wafer Capacity Spreadsheet - document produced live (live and paper copy may be offered)		00/00/2005	AVI_201860	AVI_201860			
301	Factors of Production.xls - document produced live (live and paper copy may be offered)			AVI_201542	AVI_201542			
302	Affymetrix Internal Finance Package	DX 335	01/00/2002	AVI_195202	AVI_195250			
303	Factors of Production - COGNOS 2003-2005.xls - document produced live (live and paper copy may be offered)			AVI_201548	AVI_201548			
304	Affymetrix Internal Finance Package		02/00/2002	AVI_195174	AVI_195201			
305	Affymetrix Internal Finance Package		03/00/2002	AVI_195126	AVI_195173			
306	Affymetrix Internal Finance Package		04/00/2002	AVI_195072	AVI_195125			
307	Affymetrix Internal Finance Package		05/00/2002	AVI_195017	AVI_195071			
308	Affymetrix Internal Finance Package		06/00/2002	AVI_194958	AVI_195014			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
309	Affymetrix Internal Finance Package		07/00/2002	AVI_194900	AVI_194957			
310	Affymetrix Internal Finance Package		8/00/2002	AVI_194848	AVI_194899			
311	Affymetrix Internal Finance Package		09/00/2002	AVI_194792	AVI_194847			
312	Affymetrix Internal Finance Package		10/31/2002	AVI_194740	AVI_194791			
313	Affymetrix Internal Finance Package		11/30/2002	AVI_194688	AVI_194739			
314	Affymetrix Internal Finance Package		12/31/2002	AVI_194635	AVI_194687			
315	Affymetrix Internal Finance Package		01/31/2003	AVI_194585	AVI_194634			
316	Affymetrix Internal Finance Package		02/28/2003	AVI_194525	AVI_194584			
317	Affymetrix Internal Finance Package		03/31/2003	AVI_194467	AVI_194524			
318	Affymetrix Internal Finance Package		04/30/2003	AVI_194411	AVI_194466			
319	Affymetrix Internal Finance Package		05/31/2003	AVI_194355	AVI_194410			
320	Affymetrix Internal Finance Package		06/30/2003	AVI_194296	AVI_194354			
321	Affymetrix Internal Finance Package		07/31/2003	AVI_194236	AVI_194295			
322	Affymetrix Internal Finance Package		08/31/2003	AVI_194174	AVI_194235			

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323	Affymetrix Internal Finance Package		09/30/2003	AVI_194118	AVI_194177			
324	Affymetrix Internal Finance Package		10/31/2003	AVI_194061	AVI_194177			
325	Affymetrix Internal Finance Package		11/30/2003	AVI_194002	AVI_194060			
326	Affymetrix Internal Finance Package		12/31/2003	AVI_193940	AVI_194001			
327	Affymetrix Internal Finance Package		01/31/2004	AVI_193884	AVI_193939			
328	Affymetrix Internal Finance Package		02/29/2004	AVI_193826	AVI_193883			
329	Affymetrix Internal Finance Package		03/31/2004	AVI_193764	AVI_193825			
330	Affymetrix Internal Finance Package		04/30/2004	AVI_193701	AVI_193763			
331	Affymetrix Internal Finance Package		05/31/2004	AVI_193638	AVI_193700			
332	Affymetrix Internal Finance Package		06/30/2004	AVI_193571	AVI_193637			
333	Affymetrix Internal Finance Package		07/31/2004	AVI_193510	AVI_193571			
334	Affymetrix Internal Finance Package		08/31/2004	AVI_193448	AVI_193509			
335	Affymetrix Internal Finance Package		09/30/2004	AVI_193388	AVI_193447			
336	Affymetrix Internal Finance Package		10/31/2004	AVI_193332	AVI_193387			

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337	Affymetrix Internal Finance Package		11/30/2004	AVI_193273	AVI_193331			
338	Affymetrix Internal Finance Package		12/31/2004	AVI_193208	AVI_193272			
339	Affymetrix Internal Finance Package	DX 336	01/31/2005	AVI_193090	AVI_193147			
340	Affymetrix Internal Finance Package		02/28/2005	AVI_193028	AVI_193089			
341	Affymetrix Internal Finance Package		03/31/2005	AVI_192963	AVI_193027			
342	Affymetrix Internal Finance Package		04/30/2005	AVI_192902	AVI_192962			
343	Affymetrix Internal Finance Package		05/31/2005	AVI_193148	AVI_193176			
344	Affymetrix Internal Finance Package		06/30/2005	AVI_192838	AVI_192901			
345	Affymetrix Internal Finance Package		07/31/2005	AVI_192776	AVI_192837			
346	Affymetrix Internal Finance Package		08/31/2005	AVI_192713	AVI_192775			
347	Affymetrix Internal Finance Package		09/30/2005	AVI_192641	AVI_192712			
348	Affymetrix Internal Finance Package	DX 586	12/31/2005	AVI_210112	AVI_210187			
349	Affymetrix Internal Finance Package		03/31/2006	AVI_210188	AVI_210255			
350	Toward Genome-Wide SNP Genotyping		06/00/2005	AVI_211458	AVI_211463			

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351	UBS Investment Research - The DNA Microarray Market		01/23/2006	AVI_210588	AVI_210651			
352	Infinium - Affymetrix Inc. Not out of the woods yet	PX 689	03/30/2006	AVI_210743	AVI_210771			
353	Bear Stearns US Equity Research - Affymetrix, Inc. Initiating Coverage of AFFX With an Outperform Rating and \$25 Price Target		10/12/2006	AVI_212799	AVI_212823			
354	Bear Stearns US Equity Research - Illumina, Inc. Initiating Coverage of ILMN with a Peer Perform Rating and \$38 Price Target		10/12/2006	AVI_212849	AVI_212872			
355	Pacific Growth Equities - Illumina, Inc. Transitioning research coverage with a Neutral rating: We believe positive near-term momentum is	PX 659	10/16/2006	AVI_213210	AVI_213224			
356	Illumina Product Category	PX 559	00/00/0000					
357	Illumina PowerPoint Presentation - Q3 Offsite Meeting	PX 238	00/00/0000	IAFP00599169	IAFP00599180			
358	Whole Genome Expression Market Overview and Strategy	PX 562	00/00/0000	IAFP00543950	IAFP00543966			
359	Welcome to Expression Expedition Q3 Sales Training Meeting	PX 239	00/00/2004	IAFP00543423	IAFP00543462			
360	Illumina PowerPoint Presentation - Senior Staff Offsite Meeting 500K chip discussion	PX 255	07/00/2004	IAFP00570712	IAFP00570717			
361	Illumina PowerPoint Presentation - Spring Offsite Meeting	PX 371	00/00/0000	IAFP00585780	IAFP00585815			
362	Illumina PowerPoint Presentation - Leading Edge Sales Meeting - Market Assessment	PX 560	04/00/2005	IAFP00541086	IAFP00541149			
363	Illumina PowerPoint Presentation - Leading Edge Sales Meeting	PX 561	04/00/2005	IAFP00541080	IAFP00541151			
364	Illumina PowerPoint Presentation - Production Scale Genotyping and Gene Expression Analysis Using Illumina BeadArray Technology	PX 221	00/00/0000	IAFP00540682	IAFP00540808			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
365	Illumina PowerPoint Presentation - UBS 2005 Global Life Science Conference	PX 143	09/29/2005	IAFP00630843	IAFP00630884			
366	Illumina PowerPoint Presentation - Strategies to Combat Affymetrix 500K Selling Tactics	PX 376	00/00/0000	IAFP00616713	IAFP00616716			
367	Illumina PowerPoint Presentation - Strategic Offsite Introduction		00/00/0000	IAFP00586335	IAFP00586375			
368	Illumina PowerPoint Presentation - August 2002 Offsite Meeting		08/00/2002	IAFP00570275	IAFP00570290			
369	Thomson StreetEvents Final Transcript - ILMN - Q4 2005 Illumina, Inc. Earnings Conference Call		02/01/2006	AVI_211036	AVI_211052			
370	Thomson StreetEvents Final Transcript - ILMN - Q1 2006 Illumina, Inc. Earnings Conference Call		04/18/2006	AVI_210995	AVI_211014			
371	Thomson StreetEvents Final Transcript - ILMN - Q2 2006 Illumina, Inc. Earnings Conference Call		07/18/2006	AVI_211015	AVI_211035			
372	Thomson StreetEvents Final Transcript - ILMN - Q3 2006 Illumina, Inc. Earnings Conference Call	PX 656	10/17/2006	AVI_212762	AVI_212780			
373	Affymetrix Website - List of Products	PX 691	00/00/0000					
374	Affymetrix Announces Expanded Genomic Technologies Licensing Program	DX 233	04/05/2004	AVI_132670	AVI_132672			
375	Affymetrix GeneChip® Application-Specific Fixed Assays: http://www.affymetrix.com/products/reagents/specific/application_specifi		00/00/0000	AVI_214146	AVI_214148			
376	Affymetrix and ParAllele Partner to Offer New Custom and Standard Genotyping Products		05/19/2004	AVI_213287	AVI_213289			
377	Affymetrix Completes Acquisition of ParAllele BioScience; Companies Combine Their Innovative Technologies to Enable Advances in		10/24/2005	AVI_213954	AVI_213956			
378	Affymetrix has Acquired ParAllele BioScience		00/00/0000	AVI_213234	AVI_213235			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
379	Perlegen Completes \$100 Million Financing - Proceeds will facilitate rapid acceleration of Perlegen's genome scanning initiative		04/02/2001	AVI_211577	AVI_211579			
380	Baylor College of Medicine - Affymetrix Analytical Services and Pricing http://www.bcm.edu/mcfweb/?PMID		00/00/0000	AVI_214164	AVI_214165			
381	Affymetrix to Introduce 1 Million-SNP Product in Early 2007 and Single 500K Array before End of 2006; Affymetrix and Broad Institute		07/18/2006	AVI_214154	AVI_214156			
382	Illumina Web Page Universal Arrays http://www.illumina.com/products/arraysreagents/universal_arrays.ilmn		00/00/0000					
383	Illumina Web Page - Custom Arrays http://www.illumina.com/products/arraysreagents/custom_arrays.ilmn		00/00/0000					
384	Illumina Web Page - Arrays and Reagents http://www.illumina.com/products/arraysreagents/overview.ilmn		00/00/0000					
385	Illumina Receives \$1.2 Million Phase 2 Grant from National Cancer Institute to Develop Microarrays for Protein Profiling		03/11/2002					
386	Illumina Receives \$1.0 Million Phase 2 SBIR Grant from the National Institutes of Health to Develop Matrixed Microarrays		05/10/2002	CHEE008348	CHEE008349			
387	Illumina Receives \$9 Million from the National Institutes of Health for Large-Scale Genotyping of the Human Genome		09/30/2002	IAFP00658931	IAFP00658931			
388	Illumina SNP Genotyping - Linkage IV Panel: http://www.illumina.com/General/pdf/LinkageIV/linkage_4_data_final2.pdf		00/00/2004					
389	Illumina Receives \$1.2 Million Grant from the National Institutes of Health to Continue Research on Bead-Based Proteomic Arrays		08/11/2004	IAFP00503703	IAFP00503704			
390	Illumina Reports Financial results for Second Quarter 2006; Consumables and Instrument Revenue Drive 163% Growth Over Prior-Year		07/18/2006	AVI_211595	AVI_211602			
391	Illumina Reports Financial Results for Third Quarter 2006 - Company Raises Financial Guidance		10/17/2006	AVI_213929	AVI_213936			
392	Email re: Research Help with 7G	DX 479	09/17/2005	AVI_203859	AVI_203859			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
393	Email re: FW: Revenue by Wafer for Greg Schiffman 10-7-05.xls		10/07/2005	AVI_208458	AVI_208459			
394	Email re: RE: Illumina - Affymetrix meeting	PX 528	03/30/2004	AVI_092361	AVI_092366			
395	Email re: RE: Licensing discussions - confidential	PX 529	05/14/2004	AVI_092393	AVI_092394			
396	Email re: Follow-up licensing discussions - confidential	PX 530	05/25/2004	AVI_092406	AVI_092408			
397	Email re: Revised term sheet - CONFIDENTIAL	DX 228	06/17/2004	AVI_092423	AVI_092427			
398	Email re: Cross-licensing proposal	PX 532	07/08/2004	AVI_092435	AVI_092436			
399	10+10 Sheet: Affymetrix GT Competitive Positioning		00/00/0000	IAFP00480174	IAFP00480175			
400	Email re: AFFX product shipment / revenue / cost data	PX 262	01/05/2002	IAFP00610311	IAFP00610314			
401	Email re: RE: USC Deal	PX 235	04/02/2004	IAFP00605391	IAFP00605392			
402	Email re: RE: Illumina Notified of Affy Lawsuit	PX 533	07/27/2004	IAFP00615082	IAFP00615083			
403	Email re: RE: John Todd	PX 236	11/13/2004	IAFP00601226	IAFP00601226			
404	Email re: RE: Sanger	PX 327	02/09/2005	IAFP00586146	IAFP00586147			
405	switch to I		00/00/0000	AVI_212848	AVI_212848			
406	JP Morgan Company Report - Affymetrix, Inc. The "Gold Standard" in DNA Arrays		07/24/2002	AVI_212303	AVI_212350			

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407	Second Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 300	09/20/2005					
408	Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 504	02/07/2006					
409	Illumina PowerPoint Presentation - Cost Reduction Activities Off Site Meeting	PX 136	07/19/2005	IAFP00550662	IAFP00550676			
410	Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 503	12/28/2005					
411	Affymetrix Form 10-K405 Filed: March 30, 2001 (period: December 31, 2000)		03/30/2001	AVI_119639	AVI_119739			
412	Affymetrix Form 10-K405 Filed: March 29, 2002 (period: December 31, 2001)		03/29/2002	AVI_119740	AVI_119852			
413	Affymetrix Form 10-K Filed: March 31, 2003 (period: December 31, 2002)		03/31/2003	AVI_119853	AVI_119953			
414	Affymetrix Form 10-K Filed: March 15, 2004 (period: December 31, 2003)		03/15/2004	AVI_120061	AVI_120188			
415	Affymetrix Form 10-K Filed: March 16, 2005 (period: December 31, 2004)		03/16/2005	AVI_120189	AVI_120332			
416	Affymetrix Form 10-K Filed: March 9, 2006 (period: December 31, 2005)		03/09/2006	AVI_213606	AVI_213753			
417	Affymetrix Form 10-Q Filed: May 15, 2000 (period: March 31, 2000)		05/15/2000					
418	Affymetrix Form 10-Q Filed: August 14, 2000 (period: June 30, 2000)		08/14/2000					
419	Affymetrix Form 10-Q Filed: November 14, 2000 (period: September 30, 2000)		11/14/2000					
420	Affymetrix Form 10-Q Filed: May 15, 2001 (period: March 31, 2001)		05/15/2001	AVI_125223	AVI_125272			

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421	Affymetrix Form 10-Q Filed: August 13, 2001 (period: June 30, 2001)		08/13/2001	AVI_125222	AVI_125261			
422	Affymetrix Form 10-Q Filed: November 13, 2001 (period: September 30, 2001)		11/13/2001	AVI_125214	AVI_125221			
423	Affymetrix Form 10-Q Filed: May 15, 2002 (period: March 31, 2002)		05/15/2002	AVI_125616	AVI_125658			
424	Affymetrix Form 10-Q Filed: August 12, 2002 (period: June 30, 2002)		08/12/2002	AVI_125576	AVI_125615			
425	Affymetrix Form 10-Q Filed: November 14, 2002 (period: September 30, 2002)		11/14/2002	AVI_125536	AVI_125575			
426	Affymetrix Form 10-Q Filed: May 15, 2003 (period: March 31, 2003)		05/15/2003	AVI_126176	AVI_126387			
427	Affymetrix Form 10-Q Filed: August 14, 2003 (period: June 30, 2003)		08/14/2003	AVI_126125	AVI_126175			
428	Affymetrix Form 10-Q Filed: November 14, 2003 (period: September 30, 2003)		11/14/2003	AVI_126065	AVI_126124			
429	Affymetrix Form 10-Q Filed: May 10, 2004 (period: March 31, 2004)		05/10/2004					
430	Affymetrix Form 10-Q Filed: August 9, 2004 (period: June 30, 2004)		08/09/2004					
431	Affymetrix Form 10-Q Filed: November 9, 2004 (period: September 30, 2004)		11/09/2004	AVI_126565	AVI_126621			
432	Affymetrix Form 10-Q Filed: May 10, 2005 (period: March 31, 2005)		05/10/2005	AVI_127505	AVI_127549			
433	Affymetrix Form 10-Q Filed: August 9, 2005 (period: June 30, 2005)		08/09/2005	AVI_127417	AVI_127460			
434	Affymetrix Form 10-Q Filed: November 9, 2005 (period: September 30, 2005)		11/09/2005					

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435	Affymetrix Form 10-Q Filed: May 10, 2006 (period: March 31, 2006)		05/10/2006					
436	Affymetrix Form 10-Q Filed: August 30, 2006 (period: June 30, 2006)		08/30/2006					
437	Illumina Form 10-K Filed: March 29, 2001 (period: December 31, 2000)		03/29/2001	AVI_211767	AVI_211823			
438	Illumina Form 10-K405 Filed: March 29, 2002 (period: December 31, 2001)		03/29/2002	AVI_211714	AVI_211766			
439	Illumina Form 10-K Filed: March 27, 2003 (period: December 29, 2002)		03/27/2003	AVI_211824	AVI_211889			
440	Illumina Form 10-K Filed: March 12, 2004 (period: December 28, 2003)		03/12/2004	AVI_211890	AVI_211981			
441	Illumina Form 10-K Filed: March 8, 2005 (period: January 2, 2005)		03/08/2005	AVI_211982	AVI_212153			
442	Illumina Form 10-K Filed: March 6, 2006 (period: January 1, 2006)		03/06/2006	AVI_212154	AVI_212256			
443	Illumina Form 10-Q Filed: September 8, 2000 (period: June 30, 2000)		09/08/2000	IAFP00021626	IAFP00021650			
444	Illumina Form 10-Q Filed: November 8, 2000 (period: September 30, 2000)		11/08/2000	IAFP00021193	IAFP00021216			
445	Illumina Form 10-Q Filed: May 8, 2001 (period: March 31, 2001)		05/08/2001	IAFP00021398	IAFP00021428			
446	Illumina Form 10-Q Filed: August 13, 2001 (period: June 30, 2001)		08/13/2001	IAFP00021429	IAFP00021462			
447	Illumina Form 10-Q Filed: November 14, 2001 (period: September 30, 2001)		11/14/2001	IAFP00021115	IAFP00021153			
448	Illumina Form 10-Q Filed: May 13, 2001 (period: March 31, 2002)		05/13/2001	IAFP00021651	IAFP00021740			

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449	Illumina Form 10-Q Filed: August 14, 2002 (period: June 30, 2002)		08/14/2002	IAFP00021463	IAFP00021495			
450	Illumina Form 10-Q Filed: November 13, 2002 (period: September 29, 2002)		11/13/2002	IAFP00021154	IAFP00021192			
451	Illumina Form 10-Q Filed: May 6, 2003 (period: March 30, 2003)		05/06/2003	IAFP00021357	IAFP00021397			
452	Illumina Form 10-Q Filed: August 4, 2003 (period: June 29, 2003)		08/04/2003	IAFP00021496	IAFP00021539			
453	Illumina Form 10-Q Filed: November 4, 2003 (period: September 28, 2003)		11/04/2003	IAFP00020962	IAFP00021007			
454	Illumina Form 10-Q Filed: May 4, 2004 (period: March 28, 2004)		05/04/2004	IAFP00021307	IAFP00021356			
455	Illumina Form 10-Q Filed: August 6, 2004 (period: June 27, 2004)		08/06/2004	IAFP00021540	IAFP00021625			
456	Illumina Form 10-Q Filed: November 12, 2004 (period: October 3, 2004)		11/12/2004	IAFP00021008	IAFP00021101			
457	Illumina Form 10-Q Filed: April 29, 2005 (period: April 4, 2005)		04/29/2005					
458	Illumina Form 10-Q Filed: August 8, 2005 (period: July 3, 2005)		08/08/2005					
459	Illumina Form 10-Q Filed: November 3, 2005 (period: October 2, 2005)		11/03/2005					
460	Illumina Form 10-Q Filed: May 8, 2006 (period: April 2, 2006)		05/08/2006					
461	Illumina Form 10-Q Filed: August 2, 2006 (period: July 2, 2006)		08/02/2006					
462	Letter re: Illumina, Inc.	PX 3	06/03/1998	IAFP00571399	IAFP00571404			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
463	Chee Employee File	PX 6	09/24/2004	IAFP00571395	IAFP00571459			
464	Illumina Organizational Charts	PX 11	00/00/0000					
465	Senior Staff Organizational Chart	PX 17	11/07/2003	IAFP00466791	IAFP00466791			
466	Senior Staff Organizational Chart	PX 18	03/19/2001	IAFP00466795	IAFP00466795			
467	Science R&D Organizational Chart	PX 19	02/14/2005	IAFP00022348	IAFP00022348			
468	Science R&D Organizational Chart	PX 20	09/30/2003	IAFP00466880	IAFP00466880			
469	Chemistry Organizational Chart	PX 21	00/00/0000	IAFP00022567	IAFP00022567			
470	Chemistry Organizational Chart - ABI Decoding	PX 22	06/24/2000	IAFP00466822	IAFP00466822			
471	Chemistry Organizational Chart	PX 23	11/29/2001	IAFP00466825	IAFP00466825			
472	Genomics Organizational Chart	PX 24	00/00/0000	IAFP00466831	IAFP00466831			
473	Genomics Organizational Chart - Informatics & Molecular Biology	PX 25	06/24/2003	IAFP00466826	IAFP00466829			
474	Informatics 2002 Organizational Chart	PX 26	00/00/2002	IAFP00466834	IAFP00466834			
475	Molecular Biology Organizational Chart	PX 27	00/00/0000	IAFP00466833	IAFP00466833			
476	Engineering Organizational Chart	PX 28	00/00/0000	IAFP00022568	IAFP00022568			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
477	Engineering Reporting - Feb '02 Organizational Chart	PX 29	02/00/2002	IAFP00466847	IAFP00466847			
478	Engineering Organizational Chart	PX 30	04/07/2005	IAFP00022342	IAFP00022342			
479	Chemistry Organizational Chart	PX 161	06/24/2003	IAFP00466821	IAFP00466824			
480	Bioinformatics Organizational Chart	PX 180	07/09/2001	IAFP00466830	IAFP00466830			
481	Science R&D Organizational Chart	PX 182	06/13/2003	IAFP00466861	IAFP00466861			
482	Engineering Organizational Chart	PX 183	01/10/2005	IAFP00022336	IAFP00022336			
483	Senior Staff Organizational Chart	PX 244	06/24/2002	IAFP00466794	IAFP00466794			
484	Nomination of GenTrain / GenCall Algorithms for 2002 Patent Award	PX 315	00/00/0000	IAFP00508193	IAFP00508193			
485	Declaration of John R. Stuelpnagel, D.V.M. in Affymetrix v. Illumina	PX 357	10/25/2004					
486	ngenetics Business Outline	PX 408	10/01/1997	CHEE052196	CHEE052214			
487	eGenetics Assets	PX 410	00/00/0000	CHEE037763	CHEE037763			
488	Confidential Information and Invention Assignment Agreement between Illumina, Inc. and Mark Chee	PX 411	06/01/1998	IAFP00571413	IAFP00571423			
489	Molecular Biology Organizational Chart	PX 419	11/19/2001	IAFP00466835	IAFP00466835			
490	Email re: hapmap application update	PX 425	07/29/2002	CHEE001375	CHEE001376			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
491	Illumina Employee Performance Appraisal for Bahram Kermani	PX 433	09/01/2000	CHEE036090	CHEE036093			
492	Illumina Performance Review of Bahram G. Kermani by Semyon Kruglyak	PX 486	00/00/2001	CHEE035251	CHEE035256			
493	Bahram Kermani Goals 4/2001 through 03/2002	PX 487	00/00/2002	CHEE035200	CHEE035200			
494	Grant Progress Report for Large-Scale Genotyping for the Haplotype map of the Human Genome	PX 491	09/15/2003	IAFP00571688	IAFP00571705			
495	Assignment of Patent Application from Chee, Wang and Jevons to Affymax Technologies, N.V.		02/24/1995	AVI_118798	AVI_118804			
496	Agreement for Assignment of Invention Rights from Affymax Technologies N.V. to Affymetrix, Inc. Pursuant to Affymetrix Technology		04/18/1996	AVI_085993	AVI_085994			
497	Declaration and Power of Attorney from Chee, Wang, Jevons, Bernhart and Lipshutz to Norviel, Smith and Ritter		02/24/1995	AVI_118791	AVI_118792			
498	Illumina, Inc. Form 424B4		07/28/2000					
499	Email re: specs		06/06/1999	CHEE029668	CHEE029668			
500	Genotyping Algorithm Development Team Roster		00/00/0000	IAFP00594125	IAFP00594125			
501	The final deprotection step in oligonucleotide synthesis is reduced to a mild and rapid ammonia treatment by using labile base-	PX 6	00/00/198	IAFP00006014	IAFP00006033			
502	Allylic protecting groups in solid-phase DNA synthesis	PX 7	00/00/1988	AVI_212511	AVI_212512			
503	Gene Synthesis Machines: DNA Chemistry and Its Uses	PX 8	10/18/1985	IAFP00004121	IAFP00004125			
504	Mechanical Drawing - Gasket Dup Scan Cell	DX 8	00/00/0000	AVI_137427	AVI_137431			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
505	US Patent No. 5,143,854	DX 12	09/01/1992	AVI_038412	AVI_038438			
506	Affymax Invention Disclosure Form for Nucleic Acid VLSIPS Applications # 90-008	DX 44	06/05/1990	AVI_133303	AVI_133313			
507	Amendment and Reply to Office Action Pursuant to 37 CFR § 1.111 in re Application No. 10/125,530 for Arrays for Detecting Nucleic Acids	DX 155	01/03/2006	AVI_145106	AVI_145220			
508	Handwritten Notes re: conference with Nussbacher, Dower, Fodor, WMS, EPC (part of larger document with bates range AVI_199906-	DX 157	08/06/2000	AVI_199925	AVI_199925			
509	Letter re: invention disclosure for Sequencing of Surface Immobilized Nucleic Acids Utilizing Micro Fluorescence Detection	DX 159	05/14/1990	AVI_199927	AVI_199936			
510	Invoice No. 53217 from Townsend to Affymax	DX 166	06/28/1990	AVI_133250	AVI_133302			
511	License Agreement between Affymetrix, Inc. and Genospectra, Inc.	DX 234	05/28/2004	AVI_098404	AVI_098425			
512	Collaboration Agreement between the Engelhardt Institute of Molecular Biology and the Affymax Research Institute	DX 367	07/30/1992	AVI_201316	AVI_201320			
513	Invoice No. 62341 to Affymetrix from Smith	DX 405	01/30/1991	AVI_134228	AVI_134231			
514	Declaration Under 37 C.F.R. § 1.132 in re the Patent Application 10/125,428, 10/125,460 and 10/125,530	DX 468	04/19/2002	AVI_145186	AVI_145220			
515	Curriculum Vitae of John D. Sutherland	DX 562	00/00/0000					
516	Allylic protecting groups in solid-phase DNA synthesis	DX 569	00/00/1988	IAFP00006034	IAFP00006035			
517	The Allylic Protection Method in Solid-Phase Oligonucleotide Synthesis. An Efficient Preparation of Solid-Anchored DNA Oligomers	DX 570	00/00/1990	IAFP00006036	IAFP00006041			
518	Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis. 2-Nitrobenzyloxycarbonylamino and 6-	DX 571	00/00/1974	IAFP00653834	IAFP00653839			

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519	Photosensitive Protecting Groups	DX 572	00/00/1970	IAFP00004376	IAFP00004378			
520	Photoremovable Protecting Groups in Organic Synthesis	DX 575	01/00/1980	IAFP00004748	IAFP00004774			
521	Photolytic Deprotection and Activation of Functional Groups	DX 576	00/00/0000	AVI_214037	AVI_214135			
522	Exhibit A to Expert Report of Dr. Hubert Köster - Curriculum Vitae of Dr. Hubert Köster	DX 600	00/00/0000					
523	US Patent No. 7,073,720		07/11/2006	AVI_213992	AVI_214003			
524	US Patent No. 6,845,706		01/25/2005	AVI_213586	AVI_213605			
525	US Patent No. 7,122,157		10/17/2006	AVI_213290	AVI_213301			
526	US Patent No. 6,736,324		05/18/2004	AVI_212937	AVI_212943			
527	US Patent No. 5,639,612		06/17/1997	IAFP00644449	IAFP00644769			
528	Curriculum Vitae of Robin A. Felder, Ph.D.							
529	US District Court Northern District (San Jose) Civil Docket for Case # 99-CV-21163 - Affymetrix v. Hyseq		10/30/2001					
530	US District Court Northern District (San Jose) Civil Docket for Case # 99-CV-21165 - Affymetrix v. Synteni		12/30/2001					
531	Order Construing Claims of US Patents Nos. 5,445,934, 5,744,305, 5,800,992, and 5,795,716 in Affymetrix v. Hyseq		01/22/2001	AFF-HYS017028	AFF-HYS017057			
532	Instructions for using the Affymetrix Patent CD		00/00/0000					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
533	Initial Disclosure of Prior Art Pursuant to 16-7 in Affymetrix v. Synteni		02/26/1999					
534	Initial Disclosure of Prior Art Pursuant to 16-7 in Affymetrix v. Synteni		06/11/1999					
535	First Amended Answer and Counterclaim in Affymetrix v. Synteni		08/11/2000	AVI_202022	AVI_202039			
536	First Amended Answer and Counterclaim in Affymetrix v. Synteni		08/11/2000	AVI_202040	AVI_202081			
537	Declaration of Kricka in the United States Patent and Trademark Office in re Application of T.D. Shalon, et al. Serial No. 08/514,875		10/26/1998					
538	Decision in Brown v. Fodor Interference No. 104,358		09/10/1999					
539	Decision in Brown v. Fodor Interference No. 104,358		09/10/1999					
540	US Patent No. 3,790,492		02/05/1974	AVI_214149	AVI_214153			
541	Curriculum Vitae of Dr. Hubert Köster							
542	Scientia Yugoslavica		00/00/1990	AVI_212616	AVI_212723			
543	US Patent Application No. 07/492,462 (The '462 Application)		03/07/1990	IAFP00015227	IAFP00015307			
544	US Patent Application No. 07/624,114 (The '114 application)		12/06/1990	IAFP00013538	IAFP00013692			
545	Page 52 and 77 of "Amino Acid and Peptide Synthesis"		00/00/0000	AVI_213937	AVI_213938			
546	Tetrahedron Report Number 309 - Advances in the Synthesis of Oligonucleotides by the Phosphoramidite Approach		00/00/1992	AVI_213756	AVI_213844			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
547	The Fluoren-9-ylmethoxycarbonyl Group for the Protection of Hydroxy-groups; Its Application in the Synthesis of an Octathymidylic Acid		00/00/1982	AVI_214004	AVI_214046			
548	Solid Phase Synthesis of DNA Under a Non-Depurinating Condition with a Base Labile 5'-Protecting Group (Fmoc) Using		00/00/1987	AVI_213939	AVI_213941			
549	The 9-Fluorenylmethyloxycarbonyl (Fmoc) Group as a 5'0 Base Labile Protecting Group in Solid Supported Oligonucleotide Synthesis		00/00/1987	AVI_213900	AVI_213902			
550	The 9-Fluorenylmethyloxycarbonyl Group as a 5'-OH Protection in Oligonucleotide Synthesis		00/00/89	AVI_213920	AVI_213928			
551	Total Synthesis of Thienamycin Analogues. Synthesis of the Thienamycin Nucleus and <i>dl</i> -Descysteaminythienamycin		12/06/1978	AVI_212934	AVI_212935			
552	US Patent No. 4,086,254		04/25/1978	AVI_213912	AVI_213919			
553	Chemistry and Biology of beta-Lactam Antibiotics		00/00/1982	AVI_213754	AVI_213755			
554	Declaration of Stephen A. Fodor in the Matter of EPO 0 619 321		07/28/2003	IAFP00006345	IAFP00006351			
555	Photochemistry of Phosphate Esters: An Efficient Method for the Generation of Electrophiles		00/00/1984	AVI_213225	AVI_213226			
556	The Photolysis of Methoxy-Substituted Benzoin Esters. A Photosensitive Protecting Group for Carboxylic Acids		12/29/1971	AVI_213579	AVI_213585			
557	Inverse Phosphotriester DNA Synthesis Using Photochemically-Removable Dimethoxybenzoin Phosphate Protecting Groups		00/00/1996	AVI_213957	AVI_213964			
558	P NMR Study of the Mechanism of Activation and Coupling Reactions in the Synthesis of Oligodeoxyribonucleotides by the		00/00/1984	AVI_212504	AVI_212510			
559	General scheme of the phosphotriester condensation in the oligodeoxyribonucleotide synthesis with arylsulfonyl chlorides and		00/00/1984	AVI_213965	AVI_213984			
560	<i>In situ</i> of bis-dialkylaminophosphines - a new method for synthesizing deoxyoligonucleotides on polymer		00/00/1984	AVI_214007	AVI_214017			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
561	The Efficiency of Light-Directed Synthesis of DNA Arrays on Glass Substrates		06/04/1997	IAFP00005226	IAFP00005235			
562	The Effect of Spacer, Linkage and Solid Support on the Synthesis of Oligonucleotides		00/00/1989	IAFP00006068	IAFP00006083			
563	Studies on Polynucleotides. XXIV. The Stepwise Synthesis of Specific Deoxyribopolynucleotides (4). Protected Derivatives of		12/05/1963	AVI_213985	AVI_213991			
564	Comparison of Methods for Photochemical Phosphoramidite-Based DNA Synthesis		05/18/1995	AVI_213947	AVI_213953			
565	Notebook No. DS 90002 Issued to Dennis Solas		05/21/1990	AVI_077332	AVI_077509			
566	Declaration of Stephen A. Fodor in the Matter of EPO 0 619 321		10/12/2000	IAFP00006084	IAFP00006088			
567	Email re: affymetrix competitive intel group meeting	PX 73	11/19/2004	IAFP00548515	IAFP00548516			
568	Email re: expression customers	PX 157	01/28/2003	IAFP00555816	IAFP00555816			
569	Email re: RE: Candidate Presentation: Christian Henry	PX 158	03/28/2005	IAFP00585964	IAFP00585965			
570	Email re: FW: Seminar information for 10/18/2004	PX 175	10/11/2004	IAFP00547398	IAFP00547402			
571	Email re: Draft agenda for Tuesday offsite meeting	PX 209	07/15/2005	IAFP00481160	IAFP00481162			
572	Sales Organization Chart	PX 211	00/00/0000	IAFP00466811	IAFP00466811			
573	Sales Organizational Chart	PX 212	02/02/2005	IAFP00022347	IAFP00022347			
574	Email re: RE: affx subscription fees	PX 214	05/15/2003	IAFP00566911	IAFP00566911			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
575	Email re: Affy 10+10 for GT	PX 218	02/29/2004	IAFP00480173	IAFP00480173			
576	Letter re: Trace Lane	PX 220	05/14/2003	IAFP00012415	IAFP00012415			
577	Email re: Affy Genotyping Product Positioning	PX 222	04/09/2005	IAFP00574278	IAFP00574327			
578	Email re: Affy GT Strategy and Competitive Positioning against ILMN	PX 223	04/10/2005	IAFP00480265	IAFP00480314			
579	Email re: RE: Affy GT Strategy and Competitive Positioning against ILMN	PX 224	04/10/2005	IAFP00549155	IAFP00549156			
580	Email re: RE: KNIH evaluation	PX 234	07/07/2005	IAFP00601301	IAFP00601304			
581	Email re: Affy 500K Chip	PX 253	09/20/2004	IAFP00535390	IAFP00535392			
582	Illumina, Inc. Offsite Meeting - Affy competition	PX 254	07/19/2005	IAFP00535516	IAFP00535517			
583	Email re: Affy Genotyping Product Positioning	PX 278	04/09/2005	IAFP00610331	IAFP00610332			
584	Affymetrix PowerPoint Presentation - Genotyping Products Positioning - DNA Analysis Product Marketing Group	PX 279	08/00/2004	IAFP00610333	IAFP00610381			
585	Email re: CRUK Affy prices	PX 282	05/20/2005	IAFP00610526	IAFP00610527			
586	Email re: RE: more affy info...	PX 283	03/17/2005	IAFP00601985	IAFP00601987			
587	Email re: RE: Interview Jeremy Nickolenko, Gene Expression Market Manager	PX 290	05/26/2005	IAFP00614064	IAFP00614064			
588	Email re: FW: Canadian diabetes project - Losing it - we need information	PX 303	05/23/2005	IAFP00588670	IAFP00588671			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
589	10+10 Sheet Affymetrix GT Competitive Positioning	PX 307	00/00/0000	IAFP00566933	IAFP00566935			
590	10+10 Affy/Parallele Competitive Positioning	PX 308	00/00/0000	IAFP00480411	IAFP00480414			
591	Email re: RE: WGG commitments	PX 330	03/25/2005	IAFP00616345	IAFP00616349			
592	Email re: RE: Mayo Clinic!	PX 370	12/18/2004	IAFP00549525	IAFP00549525			
593	Email re: RE: Parallele from the Inside	PX 372	05/04/2004	IAFP00615931	IAFP00615933			
594	Email re: RE: GEX vs Affy idea	PX 373	06/22/2005	IAFP00588753	IAFP00588754			
595	Email re: RE: Pritzger Brain consortium	PX 377	11/12/2004	IAFP00603036	IAFP00603044			
596	Letter re: Your New Employment with Illumina, Inc.	PX 384	04/30/2002	IAFP00571478	IAFP00571480			
597	Email re: FW: Affy3000 7G info	PX 392	07/29/2005	IAFP00610584	IAFP00610584			
598	Email re: FW: expression customers	PX 461	01/28/2003	IAFP00556385	IAFP00556385			
599	Letter re: Trace Lane	DX 312	03/14/2003	AVI_093271.1	AVI_093271.4			
600	Email re: RE: Affy 500K beta everywhere		10/15/2004	IAFP00566974	IAFP00566975			
601	Email re: RE: Brain Consortium update FW: Follow up from Illumina		02/05/2005	IAFP00567257	IAFP00567260			
602	Email re: FW: AB 1700 system		02/02/2004	IAFP00481422	IAFP00481423			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
603	Email re: RE: Affy setup		06/26/2002	IAFP00583153	IAFP00583153			
604	Email re: Draft of Offer Form and offer Letter - Dr. Fahim Amini		06/16/2003	IAFP00481163	IAFP00481163			
605	United States Department of Justice, Horizontal Merger Guidelines		04/02/1992	AVI_213236	AVI_213278			
606	Email re: RE: Merck		01/03/2005	IAFP00601855	IAFP00601857			
607	Exhibit 1 - Reproduction of Weinstein Expert Report Exhibit 4 with Corrected Gross Margin Percentages Illumina Proposal for		00/00/0000					
608	Illumina Announces Certified Service Provider Program for Genetic Analysis Services and Names First Participating		08/09/2006	AVI_213227	AVI_213228			
609	Illumina Expands Services Agreement with GlaxoSmithKline to include Infinium Genotyping with HumanHap550 BeadChips for Large-		08/02/2006	AVI_212936	AVI_212936			
610	Illumina to Conduct Custom Genotyping for Johnson & Johnson Pharmaceutical Research & Development, L.L.C.		07/13/2006	AVI_213302	AVI_213303			
611	Margin Trends.xls (live and paper copy may be offered)			AVI_209017	AVI_209017			
612	United States Patent and Trademark Office Notice of Recordation of Assignment Document		08/04/1995	AVI_214186	AVI_214193			
613	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/07/1995	AVI_214166	AVI_214170			
614	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/02/2000	AVI_214171	AVI_214176			
615	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/07/1995	AVI_214181	AVI_214185			
616	United States Patent and Trademark Office Notice of Recordation of Assignment Document		03/07/1990	AVI_214194	AVI_214212			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
617	Fortune - Soul of the New Gene Machines		05/02/2005	AVI_214177	AVI_214180			
618	Cowen and Company - Illumina Outperform (1) Another Blow Out Quarter		07/19/2006	AVI_210819	AVI_210824			
619	Leerink Swann & Company - Illumina Inc. Powerful 2Q Over Genotyping's Growth And Its Popular Arrays; Guidance Raised		07/19/2006	AVI_210847	AVI_210855			
620	Baird - Illumina, Inc. (ILMN) Dominating Genotyping Performance Fuels Big Q2 Beat, Upgrading to Outperform		07/19/2006	AVI_210808	AVI_210818			
621	Infinium Capital - Gene Expression Microarray Market Conference Call Highlights		06/15/2006	AVI_210772	AVI_210792			
622	Deutsche Bank - Affymetrix Beaten but NOT Broken!		02/01/2006	AVI_210683	AVI_210721			
623	Pacific Growth Equities - Illumina Inc. Initiating coverage with an Over Weight rating		09/20/2004	AVI_210664	AVI_210682			
624	Master Label Form Part Number 900767		08/25/2005	AVI_141869	AVI_141869			
625	Consultant Services Agreement between Daniel H. Wagner Associates and Affymax Research Institute ("ARI")		05/03/1990	WAG000446	WAG000454			
626	Letter re: signed original of Consultant Agreement		09/25/1991	WAG000481	WAG000486			
627	Letter re: Services Agreement		10/23/1992	WAG000545	WAG000552			
628	Letter re: Fax cop yof the Consultant Agreement		09/23/1991	WAG000496	WAG000503			
629	Grant Application for Sequence Determination by Hybridization		03/12/1992	WAG000976	WAG001041			
630	Letter re: continuation of consulting agreement		07/01/1992	WAG000465	WAG000465			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
631	Internal Memorandum re: New Affymax Consulting Agreement		07/02/1992	WAG000464	WAG000464			
632	Letter re: completion of initial peer review for grant application		08/26/1992	WAG000759	WAG000767			
633	Letter re: consideration of application by National Advisory Council for Human Genome Research		10/08/1992	AVI_143345	AVI_143384			
634	Signature Page		01/31/1995	AVI_118804	AVI_118804			
635	Consultant Services Agreement between Mark Stephen Chee and Affymax Technologies		02/20/1992	AVI_134335	AVI_134339			
636	Affymax Research Institute Confidential Information, Secrecy and Invention Agreement between Affymax and Mark Chee		04/28/1993	AVI_134357	AVI_134365			
637	Letter re: Services Agreement		10/23/1992	WAG000949	WAG000956			
638	Order in Civil Action No. 04-901 JJF Denying Defendant Illumina Inc.'s Motion to Dismiss Affymetrix Count 2		08/16/2006					
639	Affymetrix Bioinformatics System Package 1		00/00/2000	AVI_214213	AVI_214214			
640	Affymetrix Bioinformatics System Package 2		00/00/2000	AVI_214241	AVI_214242			
641	Affymetrix Microarray Software Solutions		00/00/2000	AVI_214239	AVI_214240			
642	GeneChip Bioinformatics Solutions		00/00/1999	AVI_214247	AVI_214248			
643	Affymetrix Microarray Suite Version 4.0		00/00/2000	AVI_214233	AVI_214234			
644	Affymetrix Microarray Suite Version 5.0		00/00/2002	AVI_214237	AVI_214238			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
645	Affymetrix Microarray Suite Version 5.1		00/00/2002	AVI_214235	AVI_214236			
646	Affymetrix Microarray Software Solutions		00/00/2000	AVI_214244	AVI_214246			
647	Software Box Wrapper		00/00/2002	AVI_214231	AVI_214232			
648	Affymetrix Software Maintenance Terms and Conditions		00/00/2001	AVI_214243	AVI_214243			
649	GeneChip Analysis Suite User Guide Version 3.3		00/00/1999	AVI_214229	AVI_214230			
650	Affymetrix NetAffx The Lab Users Guide~analysis_center_manual		00/00/2001	AVI_050007	AVI_050022			
651	GeneChip Barley Genome Array~barley_insert		00/00/2003	AVI_050107	AVI_050108			
652	GeneChip B. subtilis Genome Array~bsubtilis_insert		00/00/2002	AVI_050149	AVI_050150			
653	GeneChip Canine Genome Array~canine_insert		00/00/2003	AVI_050151	AVI_050153			
654	Array~GeneChip Drosophila Genome Array~celegans_drosophila_datasheet.p		00/00/0000	AVI_050168	AVI_050171			
655	GeneChip CustomExpress Advantage Arrays~cexpress_advantage_insert		02/02/2003	AVI_050174	AVI_050176			
656	Corporate Standard Operating Procedure: Document Control and Maintenance		00/00/0000	AVI_214225	AVI_214230			
657	Corporate Standard Operating Procedure: Document Control and Maintenance		00/00/0000	AVI_214215	AVI_214224			
658	GeneChip CustomExpress Premier Arrays~cexpress_premier_insert		02/00/2003	AVI_050177	AVI_050179			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
659	GeneChip CustomSeq Resequencing Demo Array~customdemo_insert		07/00/2003	AVI_050225	AVI_050226			
660	GeneChip CustomSeq Resequencing arrays~customseq_datasheet		00/00/2003	AVI_050227	AVI_050230			
661	GeneChip CustomSeq Resequencing Arrays~customseq_insert		11/00/2002	AVI_050254	AVI_050255			
662	GeneChip CYP450 Assay~cyp450_datasheet		00/00/2001	AVI_050363	AVI_050364			
663	Affymetrix Data Mining Tool (DMT) Version 3.0~dmt_datasheet		00/00/2001	AVI_050465	AVI_050466			
664	GeneChip E. coli Antisense Genome Array~ecoli_antisense_datasheet		00/00/2002	AVI_050899	AVI_050900			
665	Affymetrix GeneChip Operating Software (GCOS) Version 1.0 ~gcoss_datasheet		00/00/2003	AVI_052281	AVI_052282			
666	Affymetrix GeneChip Operating Software Server 1.0 (GCOS Server)~gcoss_server_datasheet		00/00/2003	AVI_052945	AVI_052946			
667	Affymetrix GeneChip DNA Analysis Software (GDAS) Version 2.0~gdass_datasheet		00/00/2003	AVI_052947	AVI_052950			
668	GeneChip Human Genom U133A 2.0 array~hgu133a_insert		00/00/2003	AVI_053292	AVI_053294			
669	GeneChip Human Genome U133 Plus 2.0 Array~hgu133_plus_insert		00/00/2003	AVI_053326	AVI_053328			
670	GeneChip Human Genome U95 Set ~hgu95_datasheet		00/00/2001	AVI_053329	AVI_053330			
671	GeneChip Human Genome Arrays ~human_datasheet		00/00/2003	AVI_053352	AVI_053355			
672	Affymetrix Prevention Plus Instrument Service Agreement~isapp_service		00/00/2001	AVI_053486	AVI_053486			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
673	Affymetrix Laboratory Information Management System (LIMS) 3.0~lims_datasheet		00/00/2001	AVI_053489	AVI_053490			
674	GeneChip Made-to-Order Program~made_datasheet		00/00/2001	AVI_054249	AVI_054253			
675	Affymetrix Microarray Suite Version 5.1~mas_datasheet		00/00/2002	AVI_054258	AVI_054259			
676	Affymetrix MicroDB User's Guide~Version 3.0~microdb_manual		00/00/2000	AVI_054814	AVI_054865			
677	GeneChip Mitochondrial Resequencing Array~mitochondrial_insert		00/00/2003	AVI_054866	AVI_054867			
678	GeneChip Mouse Genome Arrays~mogarrays_datasheet		00/00/2003	AVI_054877	AVI_0554880			
679	GeneChip Mouse Genome 430A 2.0 array~mouse430a_2_insert		00/00/2003	AVI_054881	AVI_054883			
680	GeneChip Mouse Genome 430 2.0 Array~mouse430_2_insert		11/00/2003	AVI_054884	AVI_054886			
681	GeneChip Mouse Expression Set 430 ~mouse430_datasheet		00/00/2003	AVI_054887	AVI_054888			
682	GeneChip Mouse Expression Set 430~mouse430_insert		04/00/2003	AVI_054889	AVI_054891			
683	Affymetrix NetAffx Analysis Center~netaffx_datasheet		00/00/2002	AVI_054906	AVI_054907			
684	GeneChip Pseudomonas aeruginosa Genome Array~pseudomonas_datasheet		00/00/2003	AVI_055077	AVI_055078			
685	GeneChip SARS Resequencing Array~sars_insert		07/00/2003	AVI_055164	AVI_055165			
686	Affymetrix Assurance Software Maintenance Agreement~smaassurance_service		00/00/2001	AVI_055192	AVI_055193			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
687	Affymetrix Basic~Software Maintenance Agreement~smabasic_service		00/00/2001	AVI_055194	AVI_055195			
688	Affymetrix Elite Software Maintenance Agreement~smaelite_service		00/00/2001	AVI_055196	AVI_055197			
689	GeneChip Zenopus laevis Genome Array~xenopus_insert		12/00/2003	AVI_055248	AVI_055250			
690	GeneChip Zebrafish Genome Array~zebrafish_insert		12/00/2003	AVI_055255	AVI_055257			
	Response to Interrogatory No. 1							
	Response to Interrogatory No. 2							
	Response to Interrogatory No. 3							
	Response to Interrogatory No. 4							
	Response to Interrogatory No. 5							
	Response to Interrogatory No. 7							
	Response to Interrogatory No. 9							
	Response to Interrogatory No. 11							
	Response to Interrogatory No. 12							
	Response to Interrogatory No. 16							

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Offered	Marked	Admitted
	Response to Interrogatory No. 17							
	Response to Interrogatory No. 18							
	Response to Interrogatory No. 19							
	Response to Request for Admission No. 1							
	Response to Request for Admission No. 5							
	Response to Request for Admission No. 6							

EXHIBIT 7

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1	U.S. Patent No. 5,545,531	AVI_38924-38 IAFP1-15
2	U.S. Patent No. 5,545,531 File Wrapper (U.S. App. No. 08/476,850)	IAFP16-136
3	U.S. Patent No. 5,795,716	AVI_39650-99 IAFP137-181
4	U.S. Patent No. 5,795,716 File Wrapper (U.S. App. No. 08/327,525)	AVI_1-429; IAFP182-654
5	U.S. Patent No. 6,355,432	IAFP655-709
6	U.S. Patent No. 6,355,432 File Wrapper (U.S. App. No. 09/585,659)	IAFP710-1240
7	U.S. App. No. 09/362,089	IAFP19698-20394
8	U.S. Patent No. 6,197,506	AVI_41940-988
9	U.S. Patent No. 6,197,506 File Wrapper (U.S. App. No. 09/056,927)	IAFP17577-8085
10	U.S. Patent No. 5,800,992	IAFP653774-819
11	U.S. Patent No. 5,800,992 File Wrapper (U.S. App. No. 08/670,118)	IAFP00012006-413
12	U.S. App. No. 08/168,904	IAFP13528-4133
13	U.S. App. No. 07/624,114	IAFP16538-695
14	U.S. Patent No. 5,143,854	AVI_38412-38 IAFP655448-655487 IAFP658844-658883 IAFP594726-65 IAFP7295-334
15	U.S. Patent No. 5,143,854 File Wrapper (U.S. App. No. 07/492,462)	IAFP15218-699
16	U.S. App. No. 07/362,901	IAFP15081-217

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
17	U.S. Patent No. 6,399,365	IAFP1241-300
18	U.S. Patent No. 6,399,365 File Wrapper (U.S. App. No. 09/907,196)	IAFP1301-590
19	U.S. Patent No. 6,287,850	AVI_42806-863
20	U.S. Patent No. 6,287,850 File Wrapper (U.S. App. No. 09/302,052)	IAFP18823-9097
21	U.S. Patent No. 5,945,334	AVI_40535-92
22	U.S. Patent No. 5,945,334 File Wrapper (U.S. App. No. 08/485,452)	IAFP16818-7161
23	U.S. App. No. 08/255,682	IAFP630971-1012
24	U.S. Patent No. 6,646,243	AVI_47056-106
25	U.S. Patent No. 6,646,243 File Wrapper (U.S. App. No. 10/098,203)	AVI_731-1050
26	U.S. Patent No. 6,406,957	AVI_44396-4444
27	U.S. Patent No. 6,406,957 File Wrapper (U.S. App. No. 09/690,191)	IAFP19388-697
28	U.S. Patent No. 6,329,143	AVI_43449-93
29	U.S. Patent No. 6,329,143 File Wrapper (U.S. App. No. 09/129,470)	IAFP19098-387
30	U.S. Patent No. 6,225,625	AVI_42160-200
31	U.S. Patent No. 6,225,625 File Wrapper (U.S. App. No. 08/456,598)	IAFP18086-552
32	U.S. Patent No. 5,445,934	IAFP653504-41 IAFP619956-93
33	U.S. Patent No. 5,445,934 File Wrapper (U.S. App. No. 07/954,646)	IAFP15700-16007

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TRIAL EXHIBIT LIST FOR ILLUMINA, INC.

Trial Ex. No.	Document	Bates Range
34	U.S. Patent No. 5,405,783	IAFP655387-403
35	U.S. Patent No. 5,405,783 File Wrapper (U.S. App. No. 07/850,356)	IAFP16008-344
36	U.S. Patent No. 6,140,044	IAFP655924-77
37	U.S. Patent No. 6,140,044 File Wrapper (U.S. App. No. 08/528,173)	IAFP14134-821
38	U.S. Patent No 5,974,164	AVI_40661-719
39	U.S. Patent No. 5,974,164 File Wrapper (U.S. App. No. 08/531,137)	IAFP17162-576
40	U.S. Patent No. 6,242,180	AVI_42375-433
41	U.S. Patent No. 6,242,180 File Wrapper (U.S. App. No. 09/158,765)	IAFP18553-822
42	U.S. Patent No. 6,607,887	IAFP1591-1648
43	U.S. Patent No. 6,607,887 File Wrapper (U.S. App. No. 09/796,071)	AVI_430-730
44	U.S. Patent No. 6,440,667	AVI_44896-951
45	U.S. Patent No 6,440,667 File Wrapper	IAFP19698-20394
46	U.S. Patent No. 6,355,431	IAFP659099-140
47	U.S. Patent No. 6,396,995	IAFP659141-67
48	U.S. Patent No. 6,429,027	IAFP659168-86
49	U.S. Patent No. 6,544,732	IAFP659529-47
50	U.S. Patent No. 6,620,584	IAFP659187-222
51	U.S. Patent No. 6,663,832	
52	U.S. Patent No. 6,770,441	IAFP659223-75
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57	U.S. Patent No. 6,890,741	
58	U.S. Patent No. 6,890,764	
59	U.S. Patent No. 6,913,884	
60	U.S. Patent No. 6,942,968	IAFP659305-42
61	U.S. Patent No. 6,998,274	IAFP659548-65
62	U.S. Patent No. 7,025,935	
63	U.S. Patent No. 7,033,754	
64	U.S. Patent No. 7,035,740	
65	U.S. Patent No. 7,040,959	
66	U.S. Patent No. 7,060,431	
67	U.S. Patent No. 7,092,160	
68	U.S. Patent No. 7,106,513	
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71	U.S. App. No. 2003/003,490A1	
72	U.S. App. No. 2003/175,773A1	
73	U.S. App. No. 2003/198,573A1	
74	U.S. App. No. 2004/185,482A1	
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76	U.S. App. No. 2004/224,352A1	
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83	U.S. App. No. 2005/164,246A1	
84	U.S. App. No. 2005/181,394A1	
85	U.S. App. No. 2005/181,440A1	
86	U.S. App. No. 2005/191,698A1	
87	U.S. App. No. 2005/216,207A1	
88	U.S. App. No. 2005/244,870A1	
89	U.S. App. No. 2005/266,432A1	
90	U.S. App. No. 2006/0192,58A1	
91	U.S. App. No. 2006/057,729A1	
92	U.S. App. No. 2006/118,630A1	
93	U.S. App. No. 2006/119,913A1	
94	U.S. App. No. 2006/132,877A1	
95	U.S. App. No. 2006/134,324A1	
96	U.S. App. No. 2006/134,650A1	
97	U.S. App. No. 2006/139,635A1	
98	U.S. App. No. 2006/209,309A1	
99	U.S. App. No. 2006/216,721A1	
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101	U.S. App. No. 2006/275,782A1	
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Trial Ex. No.	Document	Bates Range
103	U.S. Patent No. 3,825,410 (Bagshawe)	IAFP655107-18
104	U.S. Patent No. 4,031,197 (Marinkovich)	IAFP655119-26
105	U.S. Patent No. 4,039,288 (Moran)	IAFP655127-35
106	U.S. Patent No. 4,046,750 (Rembaum)	IAFP656028-36
107	U.S. Patent No. 4,145,406 (Schick)	IAFP655136-52
108	U.S. Patent No. 4,159,875 (Hauser)	IAFP655153-57
109	U.S. Patent No. 4,225,410 (Pace)	IAFP656037-53
110	U.S. Patent No. 4,258,001 (Pierce)	
111	U.S. Patent No. 4,259,223 (Rembaum)	IAFP656054-61
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113	U.S. Patent No. 4,427,415 (Cleveland)	IAFP655158-64
114	U.S. Patent No. 4,430,299 (Horne)	IAFP655165-81
115	U.S. Patent No. 4,542,102 (Duttagupta)	IAFP655182-87
116	U.S. Patent No. 4,595,562 (Liston)	IAFP655188-204
117	U.S. Patent No. 4,608,231 (Witty)	IAFP655205-11
118	U.S. Patent No. 4,675,299 (Witty)	IAFP655212-21
119	U.S. Patent No. 4,676,951 (Armes)	IAFP655222-46
120	U.S. Patent No. 4,678,894 (Shafer)	IAFP655247-65
121	U.S. Patent No. 4,713,326 (Dattagupta)	IAFP658884-90
122	U.S. Patent No. 4,719,087 (Hanaway)	IAFP655266-88
123	U.S. Patent No. 4,719,615 (Feyrer)	IAFP655289-301
124	U.S. Patent No. 4,797,355 (Stabinsky)	IAFP655302-07
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126	U.S. Patent No. 4,829,010 (Chang)	IAFP656087-92

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128	U.S. Patent No. 4,877,965 (Dandliker)	IAFP655308-30
129	U.S. Patent No. 4,889,427 (Van Veen)	IAFP655331-43
130	U.S. Patent No. 4,933,147 (Hollar)	IAFP655344-55
131	U.S. Patent No. 4, 981,783 (Augenlicht)	IAFP655387-403
132	U.S. Patent No. 4,997,278 (Finlan)	IAFP655404-12
133	U.S. Patent No. 5,028,545 (Soini)	IAFP655413-18
134	U.S. Patent No. 4,963,815 (Hafeman)	IAFP655356-86
135	U.S. Patent No. 5,035,863 (Finlan)	IAFP655419-32
136	U.S. Patent No. 5,047,633 (Finlan)	IAFP655433-47
137	U.S. Patent No. 5,112,736 (Caldwell)	IAFP653421-33
138	U.S. Patent No. 5,156,810 (Ribi)	IAFP655488-500
139	U.S. Patent No. 5,171,534 (Smith)	IAFP655501-14
140	U.S. Patent No. 5,173,260 (Zander)	IAFP655515-19
141	U.S. Patent No. 5,173,747 (Boiarski)	IAFP655520-32
142	U.S. Patent No. 5,196,305 (Findlay)	IAFP653434-45
143	U.S. Patent No. 5,215,889 (Schultz)	IAFP658039-79
144	U.S. Patent No. 5,219,763 (Van Hoegaerden)	IAFP655533-44
145	U.S. Patent No. 5,229,297 (Schnipelsky)	IAFP655545-67
146	U.S. Patent No. 5,266,498 (Tarcha)	IAFP655568-85
147	U.S. Patent No. 5,252,743 (Barrett)	IAFP658080-104
148	U.S. Patent No. 5,270,006 (Uchigaki)	IAFP655586-99
149	U.S. Patent No. 5,288,514 (Ellman)	IAFP653446-70
150	U.S. Patent No. 5,310,469 (Cunningham)	IAFP655600-15

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151	U.S. Patent No. 5,320,808 (Holen)	IAFP655616-51
152	U.S. Patent No. 5,348,855 (Dattagupta)	IAFP653471-89
153	U.S. Patent No. 5,362,866 (Arnold, Jr.)	IAFP656107-26
154	U.S. Patent No. 5,380,489 (Sutton)	IAFP655652-68
155	U.S. Patent No. 5,382,512 (Smethers)	IAFP653490-503
156	U.S. Patent No. 5,384,261 (Winkler)	IAFP655669-84
157	U.S. Patent No. 5,427,908 (Dower)	IAFP658105-15
158	U.S. Patent No. 5,436,327 (Southern)	IAFP655685-90
159	U.S. Patent No. 5,445,934 (Fodor)	IAFP653504-41
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161	U.S. Patent No. 5,492, 840 (Malmqvist)	IAFP655691-704
162	U.S. Patent No. 5,532,128 (Eggers)	IAFP656127-41
163	U.S. Patent No. 5,547,839 (Dower)	IAFP658116-42
164	U.S. Patent No. 5,571,639 (Hubbell)	IAFP653542-67
165	U.S. Patent No. 5,573,950 (Graessle)	IAFP655724-39
166	U.S. Patent No. 5,578,832 (Trulson)	IAFP653568-99
167	U.S. Patent No. 5,639,603 (Dower)	IAFP653700-32
168	U.S. Patent No. 5,700,637 (Southern)	IAFP13107-17
169	U.S. Patent No. 5,744,305 (Fodor)	IAFP653733-73
170	U.S. Patent No. 5,807,522 (Brown)	IAFP655751-68
171	U.S. Patent No. 5,976,896 (Kumar)	IAFP655769-816
172	U.S. Patent No. 6,063,339 (Tisone)	IAFP656142-74
173	U.S. Patent No. 6,103,463 (Chetverin)	IAFP655817-23
174	U.S. Patent No. 6,270,961 (Drmanac)	IAFP655978-98

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175	U.S. Patent No. 6,403,957 (Fodor)	AVI44396-444
176	U.S. Patent No. 7,015,046 (Wohlstadter)	IAFP656174-283
177	Prosecution History of U.S. Application No. 07/362,901 (Pirrung)	IAFP15080-15217
178	Prosecution History of U.S. Application No. 07/404,920 (Schultz)	
179	Prosecution History of U.S. Application No.07/624,120 (Fodor)	IAFP632651-737
180	Prosecution History of U.S. Application No.07/626,730 (Dower)	
181	Prosecution History of U.S. Application No.07/850,356 (Pirrung)	IAFP15700-16007
182	Prosecution History of U.S. Application No.07/954,646 (Fodor)	IAFP16008-344
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184	Prosecution History of U.S. Application No.08/127,420 (Drmanac)	
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187	Prosecution History of U.S. Application No. 08/390,272 (Fodor)	
188	Prosecution History of U.S. Application No.08/456,598 (Pirrung)	IAFP18086-552
189	Prosecution History of U.S. Application No.08/473,010 (Chetverin)	
190	Prosecution History of U.S. Application No.08/630,051 (Rava)	
191	Prosecution History of U.S. Application No.08/670,118 (Fodor)	IAFP12006-413
192	Prosecution History of U.S. Application No.09/129,470 (Pirrung)	IAFP19098-387
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194	Prosecution History of U.S. Application No.09/362,089 (Fodor)	IAFP19698-20394
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Trial Ex. No.	Document	Bates Range
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200	Prosecution History of U.S. Application No.10/125,428 (Fodor)	IAFP647005-9516
201	Prosecution History of U.S. Application No.10/125,460 (Fodor)	IAFP649517-50931
202	Prosecution Histories of U.S. Application No.10/125,530 (Fodor)	IAFP650932-3420
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205	WO Patent Application No.84/03151 (Chang)	IAFP656478-518
206	WO Patent Application No.85/01051 (Arnold, Jr.)	IAFP656372-421
207	WO Patent Application No.86/03782 (Malcolm)	IAFP656519-37
208	WO Patent Application No.88/01302 (Gingeras)	IAFP656422-77
209	WO Patent Application No.89/10977 (Southern)	IAFP656538-68
210	WO Patent Application No.90/04652 (Macevicz)	IAFP658891-930
211	WO Patent Application No.90/15070 (Pirrung)	IAFP656569-654
212	WO Patent Application No.92/10092 (Fodor)	IAFP656986-7099
213	WO Patent Application No.92/10588 (Fodor)	IAFP656655-772
214	WO Patent Application No.93/17126 (Chetverin)	IAFP656773-876
215	WO Patent Application No.95/09248 (Drmanac)	IAFP656877-969 IAFP596185-277
216	WO Patent Application No.95/11995 (Chee)	IAFP657487-709
217	WO Patent Application No.97/10365 (Lockhart)	IAFP657100-226
218	WO Patent Application No.97/27317 (Lockhart)	IAFP657227-441
219	Canadian Patent (CA) 1 248 873 (Tripatzis)	IAFP2294-313
220	European Patent (EP) Application No. EP 0 130 739 (Urdea)	IAFP654053-86
221	European Patent (EP) Application No.EP 0 235 726 (Dattagupta)	IAFP654087-115
222	European Patent (EP) Application No.EP 0 238 332 (Goodson)	IAFP654116-27

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Trial Ex. No.	Document	Bates Range
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225	European Patent (EP) Application No.EP 0 392 546 A2 (Drmanac)	IAFP654170-654185; IAFP2314-29
226	European Patent (EP) Application No.EP 0 396 116 A2 (Pope)	IAFP654189-206
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561	Multiple "Flow" cells -- Section A-A [Drawing] (D004)	
562	Top view -- Single Flowcell [Drawing] (D005)	-
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603	Various Documents (D064)	
604	Illumina's First Notice of Deposition pursuant to Fed. R. Civ. P. 30(b)(6) (D065)	
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608	Grant Award Notice (addressed to Fodor at Affymax) (D069)	AVI_142657-724
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650	Illumina's Fourth Notice of Deposition (D111)	
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658	Declaration of Michael Pirrung (Affy v. Synteni and Incyte) (D119)	IAFP5291-311
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671	10/24/91 Memo from P. Coassin (D135)	AVI_104919-20
672	Fodor et al "Multiplexed biochemical assays with biological chips" (D136)	AVI_2401-02
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693	Redacted email chain (D156)	AVI_92321-27
694	U.S. Patent Application No. 2004/0029115 A9 (D158)	
695	Letter from Smith to Nussbacher (D160)	AVI_201303
696	Letter from Ching to Nussbacher (D161)	AVI_199923-24
697	Ching letter to Fodor re draft patent application (D162)	AVI_200704-05
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704	Foote letter to Heathington (D169)	UTRF49-51
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709	Summary of presentations at 10/26/1989 Wolf Tap Genome Sequencing Conferenc (D173)	IAFP597861-82
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719	Foote letter to O'Leary (D183)	LNG123-24
720	U.S. Patent Application No. 07/362,901 (D184)	IAFP15081-217
721	Foote letter to Norviel re 05556961 patent (D185)	AVI_195439-40
722	Weaver letter to Foote (D186)	LNG2-7
723	Agreement Concerning US Patent '961 (D187)	AVI_145054-79
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725	12/6/1991 Report of Foreign Travel of Richard A. Sachleben (D189)	DOE16-23
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727	Page from Affymetrix's 10-K re competition (D201)	
728	Illumina's Third Notice of Deposition - 30(b)(6) (D2020)	
729	Illumina's Fourth Notice of Deposition - 30(b)(6) (D203)	
730	Handwritten notes (D204)	
731	List of parties (D205)	
732	9/20/04 Affymetrix emails (D206)	AVI_62650
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741	11/02/04 Affymetrix emails (D215)	AVI_59176
742	11/01/04 Affymetrix emails (D216)	AVI_59177-85
743	2004-10-26 Affymetrix emails(D217)	AVI_59359
744	2004-11-01 Yap email (D218)	AVI_64908
745	2005-05-17 Competitive Summit agenda (D219)	AVI_73490-92
746	Competitive summit notes/outline (D220)	AVI_73501-02
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750	2003-03-20 CIDR pre-meeting notes and agenda (D224)	AVI_60101-05
751	International Patent Application Number WO 93/17126 (D200)	IAFP13424-527
752	12/24/91 Letter from Kramer (D201)	PHRI931-950
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Trial Ex. No.	Document	Bates Range
761	Article by Chetverin and Kramer titled "Total Genome Sequencing with Oligonucleotide Arrays" (D210)	AVI_95865-195902
762	Kramer's Handwritten Notes (D211)	PHRI1993
763	Proposed Term Sheet for agreement between Affymetrix and New York Institute of Health (D212)	PHRI1995-001998
764	3/1/96 Handwritten Notes (D213)	PHRI2006
765	3/1/1996 Handwritten Notes (D214)	PHRI2008-002011
766	3/9/1996 Letter to Norviel from Kramer (D215)	PHRI2015-002016
767	5/6/1996 Letter to Kramer from Gingeras (D216)	PHRI2023-002025
768	5/24/1996 Memo to Norviel from Kramer (D217)	PHRI2030-002031
769	10/23/1996 Letter from Hone to Liebeschuetz (D218)	PHRI2219
770	Handwritten Notes re conversation with Norviel, Gingeras, and Hone re Affymetrix contract on 1/3/1997 [redacted version] (D219A)	PHRI2320 (redacted)
771	6/2/1997 Letter to Kramer from Norviel (D220)	PHRI2350
772	5/30/1997 License Agreement between Affymetrix and PHRI (D221)	PHRI2351-002383
773	4/11/2000 Consulting Agreement between Affymetrix and Oxford Gene Technology (D222)	PHRI1442
774	9/8/1998 Letter from McFarlane (Hone's secretary) to Kramer (D223)	PHRI1707
775	Illumina's Third Notice of Deposition - 30(b)(6) (D225)	
776	Illumina's Fourth Notice of Deposition - 30(b)(6) (D226)	
777	Espinosa email (D227)	AVI_92374-81
778	2004-06-17 Sherr email (D228)	AVI_92423-27
779	Collaboration Agreement between the Engelhart Institute of Molecular Biology and the Affymax Research Institute (D229)	AVI_195463-67
780	2003-06-30 Marfin letter to Sherr (D230)	AVI_89442
781	2003-08-11 Sherr letter to Marfin (D231)	AVI_74694-96

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Trial Ex. No.	Document	Bates Range
782	2003-11-17 Reiter letter to Sherr (D232)	AVI_55623
783	2005-04-05 Affymetrix press release re Expanded Genomic Technologies Program (D233)	AVI_132670-71
784	2004-05-28 License agreement between Affymetrix and Genospectra (D234)	AVI_98404-25
785	Genospectra projected capitalization (D236)	AVI_81752-55
786	2000-06-16 Press release (D237)	AVI_132307-8
787	License Agreement between Affymetrix and Galvoscan (D239)	AVI_90337-49
788	IP Transfer and License Agreement (Perlegen to Affymetrix) (D242)	AVI_90947-64
789	IP Transfer and License Agreement (Affymetrix to Perlegen) (D243)	AVI_91208-60
790	Gene Logic information (D244)	
791	Richard Rava CV (D245)	AVI_196069-74
792	2004-01-23 Nicholls email (D246)	AVI_72730-32
793	2004-11-01 Yap email (D247)	AVI_64908
794	2002-04-01 Cartridge barcode document (D248)	AVI_135052-58
795	Grant Application (D249)	AVI_74726-917
796	Human Genome Project pack (D250)	AVI_65050-79
797	Patent Application 09/247430 (D251)	IAFP631703-930
798	3/28/88 DOE Internal Memo re Research Grant (D253)	DOE458-459
799	Trip Report by Stodolsky re visit to Crkvenjakov Lab in 1989 (D254)	DOE466-471
800	Human Genome Initiative Review Panel Roster (D255)	IAFP640703-05
801	2/26/1989 Letter from Crkvenjakov to Stodolsky (D256)	IAFP640717
802	Report titled "Prospects for Miniaturized, Simplified and Frugal Human Genome Project" (D257)	DOE520-46
803	10/4/1989 Letter from Crkvenjakov to Stodolsky (D258)	IAFP598036
804	10/26/1989 Wolf Trap Genome Sequence Conference Itinerary (D259)	IAFP597859-60

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Trial Ex. No.	Document	Bates Range
805	Summary of presentations at 10/26/1989 Wolf Tap Genome Sequencing Conference (D260)	IAFP597861-82
806	Document re human genome (D261)	IAFP598101-17
807	DOE/NIH Human Genome Contractors/Grantee Workshop, November 3-4, 1989 (D262)	IAFP597958-8013
808	List of Contractors and Grantees that participated in the 11/4/1989 DOE Human Genome Project Contractor/Grantee Workshop (D263)	IAFP597916-25
809	1990 "Human Genome Quarterly" Newsletter re the DOE Contractor/Grantee Workshop (D264)	IAFP598014-25
810	SBH Status Report by Stodolsky, 10/28/1989 (D265)	DOE472-73
811	2/12/1990 Letter from Crkvenjakov to Stodolsky (D266)	DOE394-407
812	Abstracts of papers presented at the 1990 meeting on Genome Mapping and Sequencing (D267)	IAFP598193-326
813	8/8/1990 Letter re SBH proof-of-concept test w/ attachment outlining said test (D268)	DOE488-93
814	12/6/1991 Report of Foreign Travel of Richard A. Sachleben (D269)	DOE16-23
815	Department of Energy, Sequencing of DNA by Hybridization with Oligonucleotides Matrix (SHOM), 1992 (D270)	DOE832-39
816	Technical Progress Report of DOE Grant re SBH w/ Oligonucleotide Matrix (head scientist: Mirzabekov) (D271)	DOE13-15
817	Beattie letter to Cantor (D272)	IAFP640718-20
818	Crkvenjakov letter to Beattie (D273)	IAFP640761
819	Beattie letter to Crkvenjakov (D274)	IAFP640768-70
820	Drmanac R. Miniaturization of Sequencing by Hybridization. The Sequencing Chip Concept Poster Presentation (D275)	IAFP598099-117
821	Jacobson letter to Crkvenjakov (D276)	IAFP598050-53
822	LexiGen confidential business plan, February 1990 (D277)	KB125-173
823	Beattie fax to Brown (D278)	KB262-68

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Trial Ex. No.	Document	Bates Range
824	Report on the Sequencing by Hybridization Workshop, Moscow, USSR - "SBH - An Idea Whose Time has Probably Come" (D279)	IAFP598480-91
825	Grant Application 5-29-92, for Beattie (D280)	AVI_143475-508
826	Trace Lane CV with handwritten notes (D281)	IAFP12478-79
827	Proprietary Information and Invention Agreement (D282)	AVI_82289-94
828	Employee Termination Certificate (D283)	IAFP12507
829	Lane email (D284)	AVI_55913-15
830	Lane email (D285)	AVI_58477
831	Lane email (D286)	AVI_58463-65
832	Lane memo (D287)	IAFP12550-52
833	Balch email (D288)	IAFP12531
834	Marcus email (D289)	AVI_64239-40
835	Marcus email (D290)	AVI_63667-70
836	Marcus email (D291)	AVI_62960-69
837	Fideler email (D292)	AVI_56015-16
838	Lane email (D293)	AVI_57101-06
839	Crowley email (D294)	AVI_57763
840	Lane email (D295)	AVI_91544
841	Raimond email (D296)	AVI_57547-49
842	Raimond email (D297)	AVI_63930-31
843	Competitive Positioning Session at WWSC--Focus on Illumina (982)	AVI_73572-73
844	2005-05-17 Competitive summit agenda (D299)	AVI_73490-92
845	Presentation titled "Competition--Sales and Support Meeting February 2005" (D300)	AVI_84566-78
846	Affymetrix document entitled "Illumina competitive positioning" (D301)	AVI_73533-40

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Trial Ex. No.	Document	Bates Range
847	Presentation: Genotyping Products Positioning (D302)	AVI_73629-72
848	Lane email re SR's (D303)	AVI_56385-93
849	Lane email re Illumina (D304)	AVI_60193-94
850	Commercial Monthly Report, June 2004 (D305)	AVI_84586-96
851	Fergus email re Parrallel pricing (D306)	AVI_82345-49
852	Letter from March re Harvard Partners in GeneChip Mendel Array (D307)	AVI_85166-72
853	Lane email re 500K expectations on calls (D308)	AVI_155070-74
854	Press Release (D309)	
855	Employee Exit Interview (D310)	IAFP12453-54
856	Gunderson email re Illumina genotyping project-costs (D311)	IAFP547651-58
857	Weiss letter re Trace Lane (D312)	AVI_93271.1-72
858	Notes on Office Depot paper and other related docs (D313)	IAFP12495-789
859	Subpoena of Chunwei Wang (D314)	
860	Algorithm to Compute Base Calls (D315)	AVI_80908-19
861	U.S. Patent No. 5,795,716 (D316)	AVI_39650-99
862	File History of US Patent No. 6,607,887 (D317)	AVI_430-730
863	Illumina 5 th notice of deposition pursuant to 30b6 (D318)	
864	Budgets and Forecasts Chart (D319)	AVI_196152
865	Affymetrix Price List (D320)	AVI_135106-12
866	GeneChip Price Catalog (D321)	AVI_135082-94
867	Affymetrix Sales Proposal (D322)	AVI_151315-33
868	2003 Invoice (D323)	AVI_196154 (native production)
869	2003 Invoice (D324)	AVI_196157
870	For the record, Deposition Exhibit 325 is a partial production of Affymetrix's 10K for the	

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Trial Ex. No.	Document	Bates Range
	fiscal year ended December 31, 2004. (D325)	
871	Array Revenue (D326)	AVI_137433
872	Software Revenue (D327)	AVI_137434
873	Part to Product Mapping (D328)	AVI_201541
874	Inventory Valuation Procedures (D329)	AVI_201540
875	Part Description (D330)	AVI_201536
876	Part Description (D331)	AVI_201537
877	Chip and Instrument Revenues and Costs Excluding Variances (D332)	AVI_196156
878	Affymetrix Manufacturing Variances by Quarter (D333)	AVI_196160
879	Factors of Production - Chips (D334)	AVI_201542
880	Internal Finance Package - January 2002 (D335)	AVI_195202-50
881	Internal Finance Package - January 2005 (D336)	AVI_193090-147
882	Instrument Production - 2002-2005 (D337)	AVI_196159
883	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002-2005 (D338)	AVI_196155
884	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002-2005 (D339)	AVI_201538
885	Affy press release (D340)	
886	Nicholls email re commercial and manufacturing reports for May (D341)	AVI_91885-911
887	2002-2005 RUO Array Complaints by Quarter (D342)	AVI_201539
888	List of lost orders to Illumina (D343)	AVI_56491-93
889	OGT payment summary (D344)	AVI_201543
890	Genzyme Molecular Oncology (D345)	AVI_201544
891	Earned Royalty Chart (D346)	AVI_201545
892	Drmanac subpoena (D347)	

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Trial Ex. No.	Document	Bates Range
893	European Patent Application 0 392 546 A2 (D348)	IAFP2314-29
894	Drmanac R, Crkvenjakov R. Prospects for a Miniaturized, Simplified and Frugal Human Genome Project. Scientia Yugoslavica 1990;16:97-107. (D349)	IAFP598620-30
895	Program Schedule, May 1989 (D350)	IAFP598156-61
896	SBH Poster (D351)	See oversized page
897	1990-05-01 Letter from Lim to Drmanac (D352)	IAFP598064
898	Human Genome II Conference, Official Program & Abstracts (October 22-24 1990 (D353)	IAFP598371-430
899	1991-06-14 Office Memo, Drmanac and Crkvenjakov tentative agenda for June 28 visit (D354)	IAFP598085
900	1994-12-22 Letter from Drmanac to Norviel re SBH Format 3 (D355)	AVI_149699-705
901	WO Patent Application No. 95/09248 (D356)	IAFP596185-277
902	1990-09-30 Genome Sequencing Conference II Agenda and Crkvenjakov conference notes (D357)	IAFP598369-70; IAFP598128-35
903	1995-05-10 BioChip Array Technologies, Fabrication and Applications conference (D358)	IAFP643752-71
904	Human Genome Organization, updated list of addresses (D359)	AVI_131330-37
905	Drmanac et al. SBH and the Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes," In Lim, H. and Fickett, J. W., Cantor, C.R. and Robbins, R.J., editors, The 2nd International Conference on Bioinformatics, Supercomputing and Complex Genome Analysis, Singapore, World Scientific 1992:121-134 (D360)	IAFP622294-307
906	The Human Genome Organisation updated List of addresses (D361)	AVI_131330-37
907	Human Genome News, September, 1991 (D362)	AVI_132006-29
908	Molodow letter to LaRose re consultant and patent agreement (D363)	AVI_195287-314
909	Fax, Engelhardt Institute to Kaster, from Mirzabekov, 6-3-92 (D364)	AVI_195700
910	Fax, Kaster to Mirzabekov, 6-13-92 (D365)	AVI_195691-97

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
911	Letter, Fodor to Mirzabekov 9-18-92 (D366)	AVI_195665
912	Collaboration Agreement between the Engelhardt Institute of Molecular Biology and the Affymax Research Institute, 1992 (D367)	AVI_201316-20
913	Grant Application 5-29-92, for Beattie (D368)	AVI_143475-508
914	Fax, Fodor to Dupere, 9-2-92 re Gel Matrix Geosensor (D369)	AVI_143359-60
915	Letter, Mirzabekov to Fodor, 10-15-93, new patent applications (D370)	AVI_195636
916	Letter, 2-13-95, Fodor to Weinstein re Diekman letter (D371)	PHRI1981
917	License Agreement, PHRI and Affymetrix, 1996-1997 (D372)	AVI_195717-49
918	Email re "Nakamura Reagent Order / Japan Sales Person" (D383)	IAFP615772
919	Crkvenjakov R. Talk Presented at DOE/NIH Human Genome Sequencing Conference, Handwritten notes and transcription. (Sante Fe, NM) October 29, 1990 (D390)	IAFP598136-41
920	Crkvenjakov R. Talk Presented at DOE/NIH Human Genome Sequencing Conference, Handwritten notes and transcription. (Sante Fe, NM) October 29, 1990 (D391)	IAFP598136-41
921	Set of documents produced by Crkvenjokov (D392)	IAFP597818-82
922	Set of documents produced by Crkvenjokov (D393)	IAFP640203-926
923	Invoice #53217, William Smith, June 28, 1990 (D400)	AVI_133250-302
924	US Patent Application no. 07/624114 (D401)	IAFP13538-695
925	Abandoned application 08/168,904 (D402)	IAFP13528-4133
926	Docs related to Dower 626,730 (D403)	AVI_200971-1066
927	Invoice 62341, January 30, 1991 (D405)	AVI_134228-31
928	1994-12-22 Letter from Drmanac to Norviel re SBH Format 3 (D406)	AVI_149699-705
929	11/2/95 Letter from Kramer to Norviel (D407)	PHRI1987
930	Chetverin and Kramer "Novel Oligonucleotide Arrays and their use for sorting..." (D408)	AVI_195750-845
931	Norviel to Kramer with proposed term sheet (D409)	AVI_195996-6000

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Trial Ex. No.	Document	Bates Range
932	Kramer to Norviel (D410)	AVI_195994-95
933	Kramer to Norviel re licensing agreement (D411)	AVI_195926
934	License Agreement, PHRI and Affymetrix, 1996-1997 (D412)	AVI_195717-49
935	Weinstein letter to Norviel re invoices (D413)	PHRI2619
936	Fax from Norviel to McFarlane re: schedule of conference call between Hone and Norviel and McGarrigle (D414)	PHRI7547
937	USPTO doc: Amendment (D415)	PHRI1370-86
938	Norviel to Kramer re license agreement (D416)	AVI_195716
939	09/247,430 Patent Application (D417)	IAFP631701-930
940	Foote letter to Norviel re 05556961 patent (D418)	AVI_195439-40
941	Molodow letter to LaRose re consultant and patent agreement (D419)	AVI_195287-314
942	Norviel to Mizabekov re payment items and contract questions (D420)	AVI_195620-23
943	Rlaures to Norviel re docs (D421)	AVI_199557-58
944	IP Transfer and License agreement (Affymetrix to Perlegen) (D422)	AVI_91208-60
945	Invoice #53217, William Smith, June 28, 1990 (D423)	AVI_133250-302
946	Ching letter to Fodor re draft patent application (D424)	AVI_200704-05
947	Ching letter to Nussbacher re patent applications (D425)	AVI_199906-37
948	Wolf Trap Genome Sequencing Conference October 24-26, 1989 (D426)	IAFP597859-597882
949	Abstracts of papers presented at the 1990 meeting on Genome Mapping and Sequencing (D427)	IAFP598193-326
950	DOE/NIH Human Genome Contractors/Grantee Workshop, November 3-4, 1989, Santa Fe, NM, Abstracts (D428)	IAFP597958-8013
951	DOE/NIH Human Genome Contractor/Grantee Workshop, November 3-4, 1989, Santa Fe, NM, Speaker Abstracts (D429)	IAFP597926-57
952	Map Production Efforts, November 3, 1989 (D430)	IAFP597899-915

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
953	Mathies 1991 Notes (D431)	RAM1-83
954	Human Genome II Conference Program and Abstracts, Oct. 22-24, 1990 (D432)	RAM192-251
955	Mathies Composition Book (D433)	RAM84-191
956	Nicholls email re commercial and manufacturing reports for May (D434)	AVI_91885-911
957	Email re "Pricing for Additions to Sanger Effort--QUICK RESPONSE NEEDED" (D435)	AVI_161278-81
958	Email re "Dawn Madden Final Results" (D436)	AVI_59247-97
959	Email re "ParAllele" (D437)	AVI_59611-12
960	Email re "Price Approval Request" (D438)	AVI_57447-49
961	Email re "Illumina Expression Array Profile" (D439)	AVI_55389-92
962	Email re "Illumina Competition" (D440)	AVI_63723
963	Email re Illumina doc (D441)	AVI_75218-20
964	Email re "Illumina Draft Sales Tool" (D442)	AVI_75212-17
965	Email re "Illumina Competition" (D443)	AVI_65002
966	Email re "Illumina Competitive MeetingFeb 3.doc" (D444)	AVI_75201-03
967	Email re "Illumina Competitive Positioning" (D445)	AVI_75187-98
968	Email re "Affy vs. Illumina" (D446)	AVI_55411-14
969	Email re "Illumina Competitive Meeting Notes 021505.doc" (D447)	AVI_97964-69
970	Email re "Illumina Competitive Meeting--Friday 4th ATTY Client Privilege (D448)	AVI_97948-63
971	Email re "Illumina Meeting 11 Mar--Action" (D449)	AVI_55401
972	Email re "Illumina Competitive Meeting" (D450)	AVI_82355-67
973	Competitive Positioning Session at WWSC--Focus on Illumina (D451)	AVI_73572-73
974	Presentation titled "Competition--Sales and Support Meeting February 2005" (D452)	AVI_84566-78
975	Illumina Internal Paper (D453)	AVI_6572-739

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Trial Ex. No.	Document	Bates Range
976	Email re "Galileo for Pricing Committee" (D454)	AVI_62913
977	Email re "Perlegen/Galileo term sheet" (D455)	AVI_81635-36
978	Email re "10K S Pricing" (D456)	AVI_140902-03
979	Email re "Thoughts on ILMN announcement" (D457)	AVI_64319-22
980	Email re "USC" (D458)	AVI_82559-60
981	Email re "Welcome Trust Centre for Human Genetics" (D459)	AVI_15096-97
982	Illumina 5 th notice of deposition pursuant to 30b6 (D460)	
983	List of Lost Orders to Illumina (D461)	AVI_56491-93
984	Presentation titled "SWOT Analysis" (D462)	AVI_73513-20
985	Presentation on US Microarray Market in 2002 (D463)	AVI_74703-24
986	Affymetrix document re "Illumina, Inc.: Internal Paper February 2004" (D464)	AVI_65702-39
987	Email re "ParAllele" (D465)	AVI_59620-22
988	Email re "ILMN--competitive update" (D466)	AVI_83608-12
989	Email re "Illumina-Roche A/C privileged" (D467)	AVI_97842-44
990	Declaration of Edwin Ching (D468)	AVI_145186-220
991	Ching Privilege Log (D469)	
992	Notice of Subpoena of Sachleben (D471)	
993	Participants of SBH Workshop, Moscow (D472)	AVI_131354-59
994	ORNL Foreign Trip Report, Sachleben (D473)	RAS78-85
995	Report on the Sequencing by Hybridization Workshop, Moscow, USSR - "SBH - An Idea Whose Time has Probably Come" (D474)	IAFP598480-92
996	Khrapko, et al "A method for DNA sequencing by hybridization with oligonucleotide matrix" (D475)	IAFP620747-620760
997	Consultant Agreement and Patent Agreement between Foote and Sachleben (D476)	RAS154-80
998	'916 patent (D477)	RAS1-19

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Trial Ex. No.	Document	Bates Range
999	Email from Schiffman to Leung (D478)	AVI_204621-25
1000	Email from Ragusa to Rava (D479)	AVI_203859
1001	Email from Forbes to Lewis (D480)	AVI_207486
1002	Email from Lewis to Forbes (D481)	AVI_207077
1003	Email from Lewis to Kole (D482)	AVI_208798-800
1004	Email from Ragusa to Puccini (D483)	AVI_204163
1005	Email from Ragusa to various individuals (D484)	AVI_204214
1006	Email from Ragusa to Siegel (D485)	AVI_204226
1007	Email from Kole (D486)	AVI_207011
1008	Email from Ragusa to various individuals (D487)	AVI_204056
1009	Email from Forbes to Karas (D488)	AVI_208652-53
1010	Email from Forbes to Lewis and Karas (D489)	AVI_208823-31
1011	Document re “Historical Equivalent Chip Output & Additional Capacity Available by Quarter 2002 - 2005” (D490)	AVI_208721
1012	Document re “Trended Aggregate Shipment Patterns and Seasonality” (D491)	AVI_208469-70
1013	Email from Forbes to Lewis (D492)	AVI_208677-93
1014	Email from Kaufman to Forbes (D493)	AVI_206988
1015	Email from Cowell to Karas (D494)	AVI_206867-68
1016	Email from Ragusa to Siegel (D495)	AVI_203969-70
1017	Email from Ragusa to Karas (D496)	AVI_204044-46
1018	Email from Gilbeau to Forbes (D497)	AVI_206888-89
1019	Email from Verdoorn to Siegel (D498)	AVI_208806-07
1020	Document re “Total Demand” (D499)	AVI_201784-808
1021	Email from Karas to Forbes and Lewis (D500)	AVI_206899

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1022	Settlement Agreement with OGT, 3/23/01 (D501)	AVI_201356-77
1023	Settlement Agreement with OGT, 5/04 (D503)	AVI_201378-86
1024	License Agreement between Parallele and O-Link (D504)	AVI_201481-515
1025	Email from Mortensen to Brawer (D506)	AVI_209080
1026	Email from Sherr to Mortensen (D507)	AVI_209082-88
1027	Email from Sherr to Brawer (D508)	AVI_209285-86
1028	Email from Sherr to Blair (D509)	AVI_203264-73
1029	Email from Feuchtwang to McGarrigle (D510)	AVI_209376-77
1030	Email from Sherr to Killian and Murray (D512)	AVI_203274-79
1031	Email from Chait to Sherr (D514)	AVI_203041
1032	Email from Sherr to Pieken (D519)	AVI_203599-604
1033	Email from Subash to Pieken (D520)	AVI_202789
1034	Email from Richey to Dolan (D521)	AVI_204277-278
1035	Email from Siegel to Williams (D522)	AVI_204357
1036	Email from Kendra to Dolan and Moore (D523)	AVI_204355
1037	Email from D'Errico to Dolan (D524)	AVI_204292
1038	Email from Williams to Siegel (D525)	AVI_204303-04
1039	Option Agreement Between the Regents of the University of California and Affymetrix, Inc. (D526)	AVI_201412-29
1040	Fax cover sheet and letter from Kato to Dolan (D528)	AVI_203406-12
1041	Fax cover sheet and letter from Neumann to Dolan (D530)	AVI_204384-92
1042	Email from Horton to Sherr (D533)	AVI_203181-82
1043	Email from Wellis to Thompson and Lipshutz (D534)	AVI_204269-70
1044	License Agreement Term Sheet (D535)	AVI_205271-85

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1045	Email from White to Sherr (D536)	AVI_202579
1046	Email from Sherr to Witney (D537)	AVI_202601
1047	Letter from Witney to Affymetrix (D538)	AVI_203548-51
1048	License Agreement between Affymetrix and PHRI, 1996-1997 (D539)	AVI_195717-49
1049	Letter from Caulfield to Chait (D540)	AVI_210571-572
1050	Letter from Caulfield to Johnson (D541)	AVI_210573-578
1051	Phillip McGarrigle Declaration (D542)	
1052	Letter from McGarrigle re AB93 Comments (D543)	
1053	Powerpoint Presentation - Commercial IP Issues - Licensing, Prosecution and Litigation (D544)	AVI_210544-70
1054	Email from Nussbacher to various individuals re: PE and Illumina exclusive in zip code genotyping (D545)	AVI_97479
1055	Email from Caviar to various individuals re: Business Intelligence: Illumina Competitive Brief (D546)	AVI_91808
1056	Email from McGarrigle to Crowley re: BI today 1pm PST Whitney - Illumina launches WG expression products; Agilent intros 8-pack slides (D547)	AVI_68351-60
1057	Declaration of Michael Pirrung (Affy v. Synteni and Incyte) (D548)	IAFP5291-311
1058	U.S. Patent Application No. 10/098203 (D549)	AVI_731-1050
1059	Email from Tsang to McGarrigle re: IDS (D550)	AVI_210585-210587
1060	Email from Tsang to McGarrigle re: Visit to PTO (D551)	AVI_210541
1061	Email from Tsang to McGarrigle re: Trip to the PTO (D552)	AVI_210540
1062	Exhibit seized during the deposition about which there is a pending motion (D553)	AVI_68483-85
1063	U.S. Patent Application No. 09/585659 (D554)	AVI_1341-1863
1064	Office communication re: U.S. Patent App. No. 10/125,530 (D555)	
1065	Office communication re: U.S. Patent App. No. 10/125,428 (D556)	

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1066	U.S. Patent Application No. 09/907196 (D557)	AVI_1051-340
1067	U.S. Patent No. 6,103,463 (D558)	IAFP13118-13224
1068	Fax from Norviel to McFarlane re: schedule of conference call between Hone and Norviel and McGarrigle (D559)	PHRI7547
1069	Email from Kramer to Sherr re: PHRI license agreement (D560)	PHRI1579
1070	Sutherland Expert Report (D561)	
1071	Curriculum Vitae of John D. Sutherland (D562)	
1072	Sutherland Expert Report Materials Considered (D563)	
1073	Declaration of Professor John Sutherland. EP 0 619321 (D564)	IAFP5999-6013
1074	Declaration of Professor John Sutherland. EP 0 834575 (D565)	AVI_214018-23
1075	Declaration of Professor John Sutherland. Japanese Patent App. No. (2-508966) (D566)	
1076	U.S. Patent Application No. 07/362,901 (D567)	IAFP15081-140
1077	Schulhof, et al. "The final deprotection step in oligonucleotide synthesis is reduced to a mild and rapid ammonia treatment by using labile base-protecting groups." (D568)	
1078	Hayakawa, et al. "Allylic protecting groups in solid-phase DNA synthesis." (D569)	
1079	Hayakawa, et al. "The Allylic Protection Method in Solid-Phase Oligonucleotide Synthesis. An Efficient Preparation of Solid-Anchored DNA Oligomers." (D570)	IAFP6036-41
1080	Amit, et al. "Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis..." (D571)	IAFP653834-39
1081	Amit, et al. "Photosensitive Protecting Groups." (D572)	IAFP4376-78
1082	Cama, et al. "Total Synthesis of Thienamycin Analogues 1. Synthesis of the Thienamycin Nucleus and dl-Descysteaminylthienamycin..." (D573)	
1083	U.S. Patent No. 4,086,254 (D574)	AVI_213912-19
1084	Pillai, "Photoremovable Protecting Groups in Organic Synthesis (D575) (D575)	IAFP4748-74
1085	Pillai, "Photolytic Deprotection and Activation of Functional Groups." (D576)	AVI_214037-135
1086	Pease et al, "Light-generated Oligonucleotide Arrays for Rapid DNA Sequence Analysis"	IAFP4709-13

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Trial Ex. No.	Document	Bates Range
	(D577)	
1087	Figures of NV, NVOC, MeROC (D578)	
1088	Michael Pirrung Deposition Transcript - 1/16/06 (D579)	
1089	Infinium Report "Affymetrix: Not Out Of The Woods Yet" (D581)	AVI_210743-71
1090	Bear Stearns Report "Affymetrix: Initiating Coverage of AFFX with an Outperform Rating and \$25 Price Target" (D582)	AVI_213185-209
1091	Bear Stearns Report "Illumina: Initiating Coverage of ILMN with a Peer Perform Rating and \$38 Price Target" (D583)	AVI_212824-47
1092	Price Chart (D585)	AVI_209017
1093	Affymetrix Internal Finance Package (December 31, 2005) (D586)	AVI_210396-471
1094	Expert Report of Dr. Kevin Struhl; CV; Materials Considered (D587)	
1095	Cases as Expert Witness (D588)	
1096	"Sandwich Assay" Figure (D589)	
1097	Hand drawn figure of Infringe Claim 1 of '531 Patent (D590)	
1098	Hand drawn figure of Infringe Claim 3 of '531 Patent (D591)	
1099	Hand drawn figure 2 of Infringe Claim 3 of '531 Patent (D592)	
1100	Biochip Array Technologies: Fabrication & Applications - Drmanac, "Sequencing by Hybridization (SBH) on Super Chips" (D593)	IAFP643753-71
1101	Hand drawn figure of Green Bead and Red Bead (D594)	
1102	Hand drawn figure of Small Bead and Big Bead (D595)	
1103	Hand drawn figure of Bead in Position 1 and Bead in Position 2 (D596)	
1104	Hand drawn figure of Oligonucleotide coding Sequence 1 and Oligonucleotide coding Sequence 2 (D597)	
1105	Tora, "A Unified nomenclature for TATA box binding protein (TBP)-associated factors (TAFs) involved in RNA polymerase II transcription" (D598)	
1106	Koster CV (D600)	

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1107	Koster Materials Considered (D601)	
1108	Exhibit C - Scientia Yugoslavica - Title Page and Contents (D602)	
1109	Markman Order (D604)	
1110	Markman Opinion (D605)	
1111	WO 89/10977(D606)	IAFP656538-68
1112	Hand drawn figure (D611)	
1113	U.S. Patent No. 5,143,854 (D612)	IAFP07295-7334
1114	SBH and The Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes (D613)	IAFP 643941-643962
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1116	U.S. Patent No. 5,700,637 (D615)	IAFP 655740-655750
1117	Email from Czarnik to Chee & Stuelpnagel re T.C. having mood swings (Czarnik001)	C0007
1118	Appellant's Appendix vol 2 of 2 from Czarnik v. Illumina (Czarnik002)	
1119	Illumina's Notice of Subpoena of Gene Logic (Gene Logic 1)	
1120	Amended and Restated Agreement between Gene Logic and Affymetrix (Gene Logic 2)	AVI_199638-701
1121	Presentation re Affy Relationship (Gene Logic 3)	GL1-06
1122	Affy Task Force Meeting Minutes (Gene Logic 4)	GL121-22
1123	Affymetrix 2005 Negotiation Playbook (Gene Logic 5)	GL10-24
1124	Affymetrix 2006 Negotiation Playbook (Gene Logic 6)	GL34-38
1125	Affy Dec 14 Contract Review Meeting (Dec. 20, 2005) (Gene Logic 7)	GL75-77
1126	Afx '06 Agreement Highlights for Operations Team (Gene Logic 8)	GL79-80
1127	Gene Logic and Illumina email chain (Gene Logic 9)	IAFP611127-28
1128	1/23/04 Email to Dr. Hertz from Mr. Keser (Gene Logic 10)	GL195-201
1129	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '432 Patent	

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1130		
1131		
1132	Wolf Trap Genome Sequencing Conference	IAFP597889-95
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1134	Jacobson letter to Crkvenjakov	IAFP598050-53
1135		
1136	US Patent 5,541,061	AVI_38905-23
1137	US Patent 5,639,603	IAFP653700-653732
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1139	US Patent 4,046,750	IAFP65028-36
1140	Declaration of Dr. Hubert Koster in Support of Affymetrix's Statement of Disputed Material Facts in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '432 Patent	
1141	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Unenforceability of the '243 Patent	
1142	Civil Docket for Case # 1:98-cv-00006	
1143	Form 10-K405 (filed 3/31/1999)	AVI_47571-650
1144	Form 10-K405 (filed 3/30/2001)	AVI_119639-733
1145	Civil Docket for Case # 1:98-cv-00520	
1146	Civil Docket for Case # 3:98-cv-4507	
1147	Civil Docket for Case # 3:98-cv-4508	
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1149	McGarrigle Statement re Fodor Application	IAFP2185-89

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Trial Ex. No.	Document	Bates Range
1150	Liebeschuetz Submission re Pirrung Application	IAFP19344-47
1151	Liebeschuetz Amendments to Notice of Allowance re Fodor Application	IAFP18515-17
1152	Information Disclosure Statement	IAFP17999-8000
1153	Initial Disclosure of Prior Art Pursuant to 16-7	IAFP17960-74
1154		
1155	Pirrung Document (Ex. P to '243 Summary Judgment Memorandum)	
1156	Amendment and Response re Fodor Application	IAFP18446-50
1157	News Release: Affymetrix Provides Update on Litigation Against Incyte	
1158	Letter from Collier to Gross re licensing files, manufacturing yield/capacity issue and McCarrigle deposition date	
1159	Letter from Gross to Collier re licensing files, Illumina's production of licenses, Affymetrix internal documents, proposed meeting and McCarrigle deposition date	
1160	Argonne document [Format 3 SBH Super Chip]	ARG986-1036, 1038
1161	D. Barker et al. "Self-Assembled Random Arrays"	IAFP532343-53
1162	D. Barker's ILMN presentation on GT & GEX showing beadchip and well formation	IAFP546077-6108
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1164	Restriction Requirement - Chee Application	IAFP346-49
1165	Response to Restriction Requirement - Chee Application	IAFP345-55
1166	Supplemental Amendment - Chee Application	IAFP494-508
1167	Petition to Correct Inventorship - Chee Application	IAFP598-99
1168	Form 10-K - Illumina Inc (3/6/2006)	
1169	Securities and exchange Commission Form 10-K - Illumina Inc	IAFP20791-803
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1172	Stuelpnagel Declaration	
1173	Illumina: Atlas Development Phase Design Verification Testing Peer Technology Review Pre-read	IAFP590053-107
1174	SEC Form 10-K - Affymetrix - Annual Report for fiscal year ended 12/31/05	AVI_213606
1175	Form 8-K - Affymetrix filed 10/22/2003	AVI_126397-407
1176	US SEC Form 10-K - Affymetrix - Annual Report for fiscal year ended 12/31/2002	AVI_48118-20
1177	Market Assessment	IAFP541086-87
1178	Illumina Catalog List 2005	IAFP11913-15
1179	Competitor Overview - Q3, '04	AVI_65550-52
1180	Illumina Product Technology claim Chart	AVI_55313-14
1181	Email from Cowden to Raimond re: Proof is in publication	AVI_57962-63
1182	Email from Fergus re: ILMN earnings - details	AVI_58733-36
1183	US SEC Form 10-K - Illumina	
1184		
1185	Email from Fergus re: MS Consortium - Duke Members	AVI_58376-80
1186	Commercial Monthly Report - June 2004	AVI_84588-49
1187	Chart of Illumina's purchases	AVI_82349
1188	Email from Raimond re: Parallel pricing	AVI_092039-092045
1189	CIDR Meeting notes from Jan. 30, 2002 & Follow-up Affy internal meeting from Feb. 4, 2003	AVI_62268-73
1190	Email from Fergus re: FWD: Illumina	AVI_55929
1191	Email from Raimond re: holding off ILMN - HELP	AVI_53898
1192	Email from Lankard to Siegel re: SR's	AVI_82089
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Trial Ex. No.	Document	Bates Range
1194	Illumina Competitive Meeting - Feb. 3	AVI_55289-90
1195		
1196	Email from Orpin re: NIH award	IAFP602431-32
1197	Affymetrix Guidance Announcement	
1198	Email from Yap re: Illumina 100K SR	AVI_63653-54
1199	Illumina News Release - Illumina Initiates Shipment of Whole-Genome Genotyping Beadchips	IAFP496718-6720
1200	Affymetrix Market Perform (3/7/2006)	IAFP6455432-5437
1201	Email from Raimond re: Parallele Press Release is Out	AVI_57995- 97
1202	Illumina News Release - Illumina Reports Financial Results for 3 rd Quarter 2005	
1203		
1204		
1205	Game Time - Affymetrix Negotiation Playbook	GL 34
1206	Game Time - Affymetrix Negotiation Playbook	GL 37
1207		
1208	Email from Lankard re: the comp- Joe Gray talking with Illumina	AVI 056451-53
1209	BI Advisory Board - January 2004	AVI_65133-37
1210	Email from Kain re: Axon contact	IAFP535717-19
1211	Discussion Materials for the Scanner Project, 2/2005	IAFP535227-31
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1213	Andrew Rosenthal, <u>Bush Encounters the Supermarket, Amazed</u> , N.Y. Times, Feb. 5, 1992, at A1	IAFP644440-42
1214	April 1978 MAD Magazine	IAFP643791-830
1215	<i>Bars in the Lab: Two New Technologies Join Forces</i> , Bar Code News, March/April 1983	IAFP644436-39
1216	Benjamin Nelson, <u>Punched Cards to Bar Codes</u> 55 (Helmerts Publishing 1997)	Not Produced (Excerpts Included)

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1219	Craig K Harmon & Russ Adams, R., <u>Reading Between the Lines</u> 197-205 (North American Technology, Inc. 1984)	Not Produced (Excerpts Included)
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1227	U.S. Patent No. 5,358,691 (Clark)	
1228	Adams CV	
1229	MPEP	
1230	37 CFR s1.1-1.318	
1231	US 2,612,994 (Woodland)	
1232	Human Genome Conference Agenda, San Diego, 1990	IAFP 598078-080
1233	"Help Needed at Central Supply, STAT: Bar Codes Ease Growing Pains," March/April 1983, Bar Code News	
1234	"Sterile Bar Codes: Guiding Production for a Medical Manufacturer," March/April 1983, Bar Code News	
1235	"Upgrading Blood Banks: Checking Out The Library," March/April 1983, Bar Code News	
1236	"Health Industry Moves Quickly to Adopt Uniform Bar Coding," Sept/Oct 1983, Bar Code News	
1237	Sept/Oct 1983, Bar Code News 55	

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Trial Ex. No.	Document	Bates Range
1238	"Health Industry Bar Code (HIBC) Task Force Publishes Final Recommendations," Nov/Dec 1983, Bar Code News	
1239	"Prescription For Hospital Fixed Assets Management," July/August 1984, Bar Code News	
1240	"New Standards: Bar Code Markings For Healthcare," July/August 1984, Bar Code News	
1241	"How To Cure Medical Supply Chaos," July/August 1984, Bar Code News	
1242	"Health Care Bar Codes: Description or Identifiers," March/April 1985, Bar Code News	
1243	"The Bees' Knees in Bar Code," October 1988, ID Systems 21-26	
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1248	U.S. Patent No. 5,281,540 (Merkh)	IAFP659442-9473
1249	U.S. Patent No. 5,348,855 (Dattagupta et al.)	IAFP 653471-653489
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1251	U.S. Patent No. 5, 543,061 (Baskis)	IAFP 655705-655723
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1258	Prosecution Histories of U.S. Application No.09/585,659 (Fodor), 5/15/2001 Office Action	IAFP 1100-10

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Trial Ex. No.	Document	Bates Range
1259	Prosecution Histories of U.S. Application No.09/585,659 (Fodor), 9/17/2001 Office Action	IAFP 1143-56
1260	Prosecution Histories of U.S. Application No. 09/907,196 (Besemer), 1/16/2002 Amendment	IAFP 1503-14
1261	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 2/14/05 Office Action Summary	IAFP 648134-46
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1280	Hiraoka et al. The NDA3 Gene of Fission Yeast Encodes B-Tubulin: A Cold-Sensitive nda3 Mutation Reversibly Blocks Spindle Formation and Chromosome Movement in Mitosis. Cell 1984;39:349-358	IAFP 654774-654783
1281	Hiraoka et al. The use of charge-coupled device for quantitative optical microscopy of biological structures. Science 1987;238:36-41	IAFP 653981-653988
1282	Hiraoka et al. The use of a charge-coupled device for quantitative optical microscopy of biological structures. Abstract from PubMed 1987	IAFP 654348
1283	Khrapko et al. An oligonucleotide hybridization approach to DNA sequencing. FEBS Lett 1989;256:118-122	IAFP 654603-654607
1284	Lysov YP, Florentev VL, Khorlin AA, Khrapko KR, Shik VV, Mirzabekov AD. A new method for determining the DNA nucleotide sequence by hybridization with oligonucleotides. Dokl Biochem 1989; 436-8 (Russian original Dokl Biochem 1988;303: 355-452)	IAFP 654733-654735
1285	Shitara et al. Advantage of cocktail-use of two anti-tumor monoclonal antibodies, KM-93 and KM-231, in serum diagnosis of cancer. Anticancer Res. 1989;9:999-1004	IAFP 654969-654974
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1287	"Affymetrix and Hyseq Settle All Patent Litigation" Affymetrix News Release - 10/25/01	IAFP 656342-656344
1288	All Cited Documents from Affymetrix's Supplemental Response to Illumina's First Set of Interrogatories No. 8 (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)	
1289	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '531 Patent (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)	
1290	Declaration of Robin A. Felder, Ph.D. In Support of the Opposition of Affymetrix, Inc.'s Motion for Summary Judgment of Invalidity of the Asserted Claims of the '531 Patent (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)	
1291	Docket from <i>Affymetrix v. Hyseq, Inc.</i> 99-cv-21163 (NDCA)	IAFP 657710-41
1292	Docket from <i>Affymetrix v. Synteni, Inc. et al.</i> 99-cv-21164 (NDCA)	IAFP 657742-825

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Trial Ex. No.	Document	Bates Range
1293	Opposition by Synteni and Incyte to Motion to Strike and Dismiss Certain Allegations of Inequitable Conduct (<i>Affymetrix v. Synteni, Inc. et al.</i> 99-cv-21164 (NDCA))	IAFP 657458-86
1294	Order Construing Claims of U.S. Patents Nos. 5,445,934; 5,744,305; 5,800,992; and 5,795,716 (<i>Affymetrix v. Synteni, Inc. et al.</i> 99-cv-21164 (NDCA))	AFF-HYS017028-57
1295	ARG 000986-1036	
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1298	<i>OGT v. Affymetrix</i>	IAFP6607-27
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1300	DOE Final Technical Progress Report	IAFP572351-68
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1302	Letter relating to File #26 (May 7,1990)	AVI_201301-14
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1306	Billing Records (Dec. 5, 1990)	AVI_134228-29
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1309	Request for Inference Against '531	ARG0001192-96
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1311	'243 Information Disclosure Statement	IAFP2228, IAFP2232
1312	'432 Information Disclosure Statement	IAFP1123, IAFP1127
1313	Prosecution Histories of U.S. Application No.09/585,659 (Fodor)	IAFP 710-1240
1314	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 2/14/05 Office Action Summary	IAFP 648134-146

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1315	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 3/31/06 Office Action (Rejection)	DX 556
1316	Prosecution Histories of U.S. Application No.10/125,530 (Fodor), 5/19/04 Office Action Summary	IAFP 651859-651867
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1320	Bauman JG, Wiegant J, Borst P, van Duijn P. A new method for fluorescence microscopical localization of specific DNA sequences by in situ hybridization of fluorochrome labelled RNA. Exp Cell Res 1980;128:485-90	IAFP 653863-653868
1321	Smith LM, Fung S, Hunkapiller MW, Hunkapiller TJ, Hood LE. The synthesis of oligonucleotides containing an aliphatic amino group at the 5' terminus: synthesis of fluorescent DNA primers for use in DNA sequence analysis. Nucleic Acids Res 1985;13:2399-2412	IAFP 654989-655002
1322	Haralambidis J, Chai M, Tregear GW. Preparation of base-modified nucleosides suitable for non-radioactive label attachment and their incorporation into synthetic oligodeoxyribonucleotides. Nucleic Acids Res 1987;15:4857-76	IAFP 654313-654332
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1324	Shack RV, Bartels PH, Buchroeder RA, Shoemaker RL, Hillman DW, Vukobratovich D. Design for a fast fluorescent laser scanning microscope. Anal Quant Cytol Histol 1987;9:509-20	IAFP 654957-654968
1325	Marinkovich VA. In vitro method for determining allergic hypersensitivity. United States Patent 1977: 4,031,197	IAFP 655119-655126
1326	Wang SP, Grayston JT. Immunologic relationship between genital TRIC, lymphogranuloma venereum, and related organisms in a new microtiter indirect immunofluorescence test. Am J Ophthalmol 1970; 70:367-74	IAFP 656331-656338
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1389	Kricka CV	
1390	Exhibit C of Kricka Report: '243 & '432 Patent Family Histories	
1391	Exhibit E of Kricka Report: Drmanac & Crkvenjakov References Reviewed	
1392	Exhibit D of Kricka Report: Drmanac & Crkvenjakov Timeline	
1393	Exhibit G of Kricka Report: '432 Priority Chart	
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1402	Opposition by Synteni and Incyte to Motion to Strike and Dismiss Certain Allegations of Inequitable Conduct	IAFP657458-86
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1425	Presentation - BeadArray - Fabrication	IAFP 630843-84
1426	Multi-Sample Gene Expression Presentation	IAFP 496335-36
1427	Memorandum Opinion 8/16/06	
1428	WO 93/17126 Application	IAFP 13426-13511
1429	Illumina BeadStation 500G System Manual	IAFP 642226-31
1430	Gene Expression on Sentrix Arrays Direct Hybridization System Manual	IAFP 632997
1431	'365 Patent File History -- 12/20/01 A't at 1, 4	IAFP 1483-86
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1440	U.S. Patent No. 5,636,612	IAFP 644449-69
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1487	Carruthers, “Gene Synthesis Machines: DNA Chemistry and Its Uses”, Science, 230:281, (1985)	IAFP4121-25
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1498	Dower Lab Notebook	AVI_138695-755
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Trial Ex. No.	Document	Bates Range
1501	Solas Lab Notebook	AVI_76998-7103
1502		
1503	Fodor Lab notebook	AVI_138756-963
1504	Fodor Lab notebook	AVI_139119-216
1505	Fodor Lab notebook	AVI_139217-318
1506	Fodor Lab notebook	AVI_140514-24
1507	Illumina BeadStation 500X manual	IAFP10235-40
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1509	http://www.illumina.com/products/snp/mhc_panelset.ilmn	
1510	http://www.illumina.com/General/pdf/LinkageIV/LINKAGE_4_DATA_FINAL2.pdf	
1511	http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=AFFX&script=417&layout=-6&item_id=573680	
1512	http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=AFFX&script=416&layout=-6&item_id=771923	
1513	Agilent Technologies Form 10-K for 2005	
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1516	Form 10-K, Illumina, Inc., January 1, 2006	
1517	Form 10-K, Affymetrix, Inc., December 31, 2005	
1518	Dickinson Deposition, Exhibit 563	Dickinson Dep. Ex. 563
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1524	"Affymetrix Guidance Announcement Final Transcript," September 27, 2005	IAFP658954-64
1525	"Affymetrix Guidance Announcement Final Transcript," January 5, 2006	IAFP658932-53
1526	Affymetrix document re 500K capacity issue	
1527	Affymetrix document re 500K capacity issue	AVI_208510-17
1528	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002-2005	AVI_201538
1529	Affymetrix email re chip shortfall in Q4, 2005	AVI_208747-49
1530		
1531	AFFX -- Affymetrix at Bears Stearns 19 th Annual Healthcare Conference, September 12, 2006	IAFP658988-96
1532	Affymetrix document identifying technology licensed under Tufts license is fundamental technology of Illumina's commercial products	AVI_065673
1533	License Agreement between Amersham Biosciences and Illumina, 1/24/02	Velarde Dep. Ex. 557
1534	Illumina licensing proposal to Affymetrix	Lipshutz Dep. Ex. 57
1535	"Affymetrix and Molecular Dynamics Enter Agreements to Expand Access to DNA Array-Based Genetic Analysis Tools," Decemeber 2, 1997	"Affymetrix and Molecular Dynamics Enter Agreements to Expand Access to DNA Array-Based Genetic Analysis Tools," Decemeber 2, 1997
1536	Letter from Takara Shuzo to Affymetrix complaining about financial terms under license agreement and that Agilent has not taken a license under Affymetrix patents	AVI_203354-5
1537		
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1539	Letter from Genomic Solutions discussing potential collaboration that was discussed during licensing negotiations	AVI_204356
1540	Affymetrix 10-K, March 31, 2003	AVI_119954-120060
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Trial Ex. No.	Document	Bates Range
1542	License Agreement between Galvoscan and Affymetrix	AVI_202212-24
1543	Purchase Agreement between Galvoscan and Affymetrix	AVI_202201-11
1544		
1545	License agreement between PHRI and Affymetrix.	PHRI_002350-83
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1549	AUTM U.S. Licensing Survey: FY 2004. Association of University Technology Managers, p. 56	IAFP659013-81
1550	License Agreement between Tufts University and Illumina	IAFP22372-88
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1552	License agreement between Dade Behring and Illumina.	IAFP 589952-68
1553	License Agreement between Invitrogen IP Holdings and Illumina, 3/31/04	IAFP 644096-113
1554	License Agreement between Incyte Corp. and Illumina, 11/22/04	IAFP613338-45
1555	License Agreement between Stratagene and Illumina, 1/21/04	IAFP613389-403
1556	License Agreement between Spyder Instruments, Inc. and Trega Biosciences, 4/14/99	IAFP644204-17
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1558		
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1564	Illumina, Inc. 2005 Annual Report	
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1566	UBS Investment Research, "Q-Series: The DNA Microarray Market" 01/23/06	
1567	Affymetrix invoice sales, 1/02 - 12/05	AVI_196154 (Native Production)
1568	Affymetrix Internal Finance Reports	AVI_192641-5202
1569	Illumina Invoice Sales Since Jan. 2002	IAFP643963-66
1570	Illumina Journal Entry Report	IAFP643966-69
1571	Illumina Instrument Gross Margins	IAFP641507 A-R
1572	Illumina financial sheets	IAFP643324-5
1573	Letter from C. Garlington to A. Gross, 3/17/06	N/A
1574	Illumina product key	IAFP 643967-93
1575	Sims Expert Rep. Ex. A	N/A
1576	Sims Expert Rep. Ex. D.1.1	N/A
1577	Sims Expert Rep. Ex. D.2.1	N/A
1578	Sims Expert Rep. Ex. D.2.2	N/A
1579	Sims Expert Rep. Ex. D.3.1	N/A
1580	Sims Expert Rep. Ex. D.4.1	N/A
1581	Sims Expert Rep. Ex. D.4.2	N/A
1582	Sims Expert Rep. Ex. D.5.1	N/A
1583	Sims Expert Rep. Ex. D.5.2	N/A
1584	Sims Expert Rep. Ex. E.1.1	N/A
1585	Sims Expert Rep. Ex. F.1.1	N/A

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Trial Ex. No.	Document	Bates Range
1586	Sims Expert Rep. Ex. G.1.1	N/A
1587	Sims Expert Rep. Ex. G.1.2	N/A
1588	Sims Expert Rep. Ex. G.1.3	N/A
1589	Sims Expert Rep. Ex. G.2.1	N/A
1590	Sims Expert Rep. Ex. G.2.2	N/A
1591	Sims Expert Rep. Ex. G.2.3	N/A
1592	Sims Expert Rep. Ex. G.2.4	N/A
1593	Sims Expert Rep. Ex. G.2.5	N/A
1594	Sims Expert Rep. Ex. G.2.6	N/A
1595	Sims Expert Rep. Ex. G.3.1	N/A
1596	Sims Expert Rep. Ex. G.4.1	N/A
1597	Sims Expert Rep. Ex. G.4.2	N/A
1598	Sims Expert Rep. Ex. G.4.3	N/A
1599	Sims Expert Rep. Ex. G.5.1	N/A
1600	Sims Expert Rep. Ex. G.5.2	N/A
1601	Sims Expert Rep. Ex. G.6.1	N/A
1602	Sims Expert Rep. Ex. G.7.1	N/A
1603	Sims Expert Rep. Ex. G.7.2	N/A
1604	Sims Expert Rep. Ex. G.8.1	N/A
1605	Sims Expert Rep. Ex. G.8.2	N/A
1606	Sims Expert Rep. Ex. H.1.1	N/A
1607	Sims Expert Rep. Ex. H.1.2	N/A
1608	Sims Expert Rep. Ex. H.1.3	N/A
1609	Sims Expert Rep. Ex. H.2.1	N/A

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1610	Sims Expert Rep. Ex. H.2.2	N/A
1611	Sims Expert Rep. Ex. H.2.3	N/A
1612	Sims Expert Rep. Ex. H.2.4	N/A
1613	Sims Expert Rep. Ex. H.2.5	N/A
1614	Sims Expert Rep. Ex. H.2.6	N/A
1615	Sims Expert Rep. Ex. H.3.1	N/A
1616	Sims Expert Rep. Ex. H.4.1	N/A
1617	Sims Expert Rep. Ex. H.4.2	N/A
1618	Sims Expert Rep. Ex. H.4.3	N/A
1619	Sims Expert Rep. Ex. H.5.1	N/A
1620	Sims Expert Rep. Ex. H.5.2	N/A
1621	Sims Expert Rep. Ex. H.5.3	N/A
1622	Sims Expert Rep. Ex. H.6.1	N/A
1623	Sims Expert Rep. Ex. H.6.2	N/A
1624	Sims Expert Rep. Ex. H.7.1	N/A
1625	Sims Expert Rep. Ex. H.8.1	N/A
1626	Sims Expert Rep. Ex. H.8.2	N/A
1627	Sims Expert Rep. Ex. H.9.1	N/A
1628	Sims Expert Rep. Ex. H.9.2	N/A
1629	Sims Expert Rep. Ex. I.1.1	N/A
1630	Sims Expert Rep. Ex. I.1.2	N/A
1631	Sims Expert Rep. Ex. I.1.3	N/A
1632	Sims Expert Rep. Ex. I.2.1	N/A
1633	Sims Expert Rep. Ex. I.2.2	N/A

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1634	Sims Expert Rep. Ex. I.2.3	N/A
1635	Sims Expert Rep. Ex. I.2.4	N/A
1636	Sims Expert Rep. Ex. I.2.5	N/A
1637	Sims Expert Rep. Ex. I.2.6	N/A
1638	Sims Expert Rep. Ex. I.3.1	N/A
1639	Sims Expert Rep. Ex. I.4.1	N/A
1640	Sims Expert Rep. Ex. I.4.2	N/A
1641	Sims Expert Rep. Ex. I.4.3	N/A
1642	Sims Expert Rep. Ex. I.5.1	N/A
1643	Sims Expert Rep. Ex. I.5.2	N/A
1644	Sims Expert Rep. Ex. I.6.1	N/A
1645	Sims Expert Rep. Ex. I.7.1	N/A
1646	Sims Expert Rep. Ex. I.7.2	N/A
1647	Sims Expert Rep. Ex. I.8.1	N/A
1648	Sims Expert Rep. Ex. I.8.2	N/A
1649	Sims Expert Rep. Ex. J.1.1	N/A
1650	Sims Expert Rep. Ex. J.1.2	N/A
1651	Sims Expert Rep. Ex. J.1.3	N/A
1652	Sims Expert Rep. Ex. J.2.1	N/A
1653	Sims Expert Rep. Ex. J.2.2	N/A
1654	Sims Expert Rep. Ex. J.2.3	N/A
1655	Sims Expert Rep. Ex. J.2.4	N/A
1656	Sims Expert Rep. Ex. J.2.5	N/A
1657	Sims Expert Rep. Ex. J.2.6	N/A

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1658	Sims Expert Rep. Ex. J.3.1	N/A
1659	Sims Expert Rep. Ex. J.4.1	N/A
1660	Sims Expert Rep. Ex. J.4.2	N/A
1661	Sims Expert Rep. Ex. J.4.3	N/A
1662	Sims Expert Rep. Ex. J.5.1	N/A
1663	Sims Expert Rep. Ex. J.5.2	N/A
1664	Sims Expert Rep. Ex. J.5.3	N/A
1665	Sims Expert Rep. Ex. J.6.1	N/A
1666	Sims Expert Rep. Ex. J.6.2	N/A
1667	Sims Expert Rep. Ex. J.7.1	N/A
1668	Sims Expert Rep. Ex. J.8.1	N/A
1669	Sims Expert Rep. Ex. J.8.2	N/A
1670	Sims Expert Rep. Ex. J.9.1	N/A
1671	Sims Expert Rep. Ex. K.1.1	N/A
1672	Sims Expert Rep. Ex. K.1.2	N/A
1673	Sims Expert Rep. Ex. K.1.3	N/A
1674	Sims Expert Rep. Ex. K.2.1	N/A
1675	Sims Expert Rep. Ex. K.2.2	N/A
1676	Sims Expert Rep. Ex. K.2.3	N/A
1677	Sims Expert Rep. Ex. K.2.4	N/A
1678	Sims Expert Rep. Ex. K.2.5	N/A
1679	Sims Expert Rep. Ex. K.2.6	N/A
1680	Sims Expert Rep. Ex. K.3.1	N/A
1681	Sims Expert Rep. Ex. K.4.1	N/A

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1682	Sims Expert Rep. Ex. K.4.2	N/A
1683	Sims Expert Rep. Ex. K.4.3	N/A
1684	Sims Expert Rep. Ex. K.5.1	N/A
1685	Sims Expert Rep. Ex. K.5.2	N/A
1686	Sims Expert Rep. Ex. K.5.3	N/A
1687	Sims Expert Rep. Ex. K.6.1	N/A
1688	Sims Expert Rep. Ex. K.6.2	N/A
1689	Sims Expert Rep. Ex. K.7.1	N/A
1690	Sims Expert Rep. Ex. K.8.1	N/A
1691	Sims Expert Rep. Ex. K.8.2	N/A
1692	Sims Expert Rep. Ex. K.9.1	N/A
1693	Sims Expert Rep. Ex. K.9.2	N/A
1694	Sims Expert Rep. Ex. L.1.1	N/A
1695	Sims Expert Rep. Ex. L.1.2	N/A
1696	Sims Expert Rep. Ex. L.1.3	N/A
1697	Sims Expert Rep. Ex. L.2.1	N/A
1698	Sims Expert Rep. Ex. L.2.2	N/A
1699	Sims Expert Rep. Ex. L.2.3	N/A
1700	Sims Expert Rep. Ex. L.2.4	N/A
1701	Sims Expert Rep. Ex. L.2.5	N/A
1702	Sims Expert Rep. Ex. L.2.6	N/A
1703	Sims Expert Rep. Ex. L.3.1	N/A
1704	Sims Expert Rep. Ex. L.4.1	N/A
1705	Sims Expert Rep. Ex. L.4.2	N/A

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1706	Sims Expert Rep. Ex. L.4.3	N/A
1707	Sims Expert Rep. Ex. L.5.1	N/A
1708	Sims Expert Rep. Ex. L.5.2	N/A
1709	Sims Expert Rep. Ex. L.5.3	N/A
1710	Sims Expert Rep. Ex. L.6.1	N/A
1711	Sims Expert Rep. Ex. L.6.2	N/A
1712	Sims Expert Rep. Ex. L.7.1	N/A
1713	Sims Expert Rep. Ex. L.8.1	N/A
1714	Sims Expert Rep. Ex. L.8.2	N/A
1715	Sims Expert Rep. Ex. L.9.1	N/A
1716	Sims Expert Rep. Ex. L.9.2	N/A
1717	Sims Expert Rep. Ex. M.1.1	N/A
1718	Sims Expert Rep. Ex. M.1.2	N/A
1719	Sims Expert Rep. Ex. M.1.3	N/A
1720	Sims Expert Rep. Ex. M.2.1	N/A
1721	Sims Expert Rep. Ex. M.2.2	N/A
1722	Sims Expert Rep. Ex. M.2.3	N/A
1723	Sims Expert Rep. Ex. M.2.4	N/A
1724	Sims Expert Rep. Ex. M.2.5	N/A
1725	Sims Expert Rep. Ex. M.2.6	N/A
1726	Sims Expert Rep. Ex. M.3.1	N/A
1727	Sims Expert Rep. Ex. M.4.1	N/A
1728	Sims Expert Rep. Ex. M.4.2	N/A
1729	Sims Expert Rep. Ex. M.4.3	N/A

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Trial Ex. No.	Document	Bates Range
1730	Sims Expert Rep. Ex. M.5.1	N/A
1731	Sims Expert Rep. Ex. M.5.2	N/A
1732	Sims Expert Rep. Ex. M.5.3	N/A
1733	Sims Expert Rep. Ex. M.6.1	N/A
1734	Sims Expert Rep. Ex. M.6.2	N/A
1735	Sims Expert Rep. Ex. M.7.1	N/A
1736	Sims Expert Rep. Ex. M.8.1	N/A
1737	Sims Expert Rep. Ex. M.8.2	N/A
1738	Sims Expert Rep. Ex. M.9.1	N/A
1739	Sims Expert Rep. Ex. M.9.2	N/A
1740	Sims Expert Rep. Ex. M.	N/A
1741	Sims Expert Rep. Ex. N.1	N/A
1742	Sims Expert Rep. Ex. N.2	N/A
1743	Sims Expert Rep. Ex. O.1.1	N/A
1744	Sims Expert Rep. Ex. P.1.1	N/A
1745	Sims Expert Rep. Ex. P.1.2	N/A
1746	Sims Expert Rep. Ex. Q.1.1	N/A
1747	Sims Expert Rep. Ex. R.1.1	N/A
1748	Sims Expert Rep. Ex. S.1.1	N/A
1749	Sims Expert Rep. Ex. S.1.2	N/A
1750	Sims Expert Rep. Ex. S.1.3	N/A
1751	Sims Expert Rep. Ex. S.1.4	N/A
1752	Sims Expert Rep. Ex. T.1.1	N/A
1753	Sims Expert Rep. Ex. T.1.2	N/A

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Trial Ex. No.	Document	Bates Range
1754	Sims Expert Rep. Ex. U.1.1	N/A
1755	Sims Expert Rep. Ex. U.1.2	N/A
1756	Letter from R. Lipshutz to Takara re renegotiation of license	AVI_203404-05
1757	Document re Agilent Technologies	AVI_211556-57
1758	Document re GE Healthcare, Codelink Bioarray Systems	AVI_211558-63
1759	Document re Sequenom	AVI_211580-81
1760	JP Morgan document re Affymetrix	AVI_212303-5
1761	Illumina proposal to Tufts via MBRI	Stuelpnagel Dep. Ex. 345
1762	Letter from MBRI to Illumina	Stuelpnagel Dep. Ex. 346
1763	Illumina, Form-10K, Fiscal Year Ending January 1, 2006	
1764	Affymetrix Form 10-K Fiscal Year ending December 31, 2005	
1765	Q4 2002 Affymetrix Earnings Conference Call, Final Transcript, p. 4	IAFP645151-65
1766	"Affymetrix Acquires ParAllele BioScience," Jan. 6, 2005, DrugResearcher.com	IAFP644932-34
1767	Affymetrix Form DEF 14A, Apr. 29, 2003	
1768	Affymetrix website (www.affymetrix.com)	
1769	Affymetrix website (www.com/corporate/history/factsheet.affx)	
1770	Affymetrix News Release, July, 19, 1996, "Affyemtrix Inc. Reports Second Quarter Results."	
1771	Affymetrix News Release, Septemeber 7, 1999, "Affymetrix Commences Commerical Shipments of GeneChip Products From West Sacramento Manufacturing Facility."	
1772	Affymetrix Form 10-Q, period ending Sept. 30, 1996	
1773	Affymetrix News Release, Aug. 31, 1999	
1774	"Opportunities for DNA Microchip and Array Technologies," Frost & Sullivan, 1999	AVI_17597-789
1775	DNA Microarrays, A Strategic Market Analysis, 2001	AVI_16353-566
1776	"Affymetrix Launches First Commercial Human DNA Array to Use Draft of Human	IAFP644973-75

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Trial Ex. No.	Document	Bates Range
	Genome,” Affymetrix News Release, Jan. 12, 2002	
1777		
1778	“Affymetrix Competitive Advantage Improving, New Products Near Term,” Baird U.S. Equity Research, 9/12/02	IAFP467722-26
1779	“Affymetrix Launches New Products Including a Whole Human Genome Single Array,” Baird U.S. Equity Research, Oct. 2, 2003	IAFP467605-09
1780	“Commercial Aspects of Microarray Technology,” Technology Report, Ken Rubenstein, March 2003	IAFP644922-24
1781	“Affymetrix Results from End-Market Studies,” Baird U.S. Equity Research, 1/15/04	IAFP467471-83
1782	Reagents and Diagnostics, Highlights from the 2004 ABRF Meeting, Update on Microarray Market,” Baird U.S. Equity Research, 3/05/04	IAFP467454-57
1783	“Affymetrix Reports Break-Out Q4-04, Business Hitting on All Cylinders, PT to \$46,” Baird U.S. Equity Research, 1/27/05	IAFP616698-707
1784	“Affymetrix Reports Light Q205, Guides for Greater Back-End Loading, Maintain Underperform,” Baird U.S. Equity Research, 7/22/05	IAFP581377-86
1785	Stuelpnagel Dep. Exh. 9	Stuelpnagel Dep. Exh. 9
1786	Affymetrix at Bear Stearns 19 th Annual Healthcare Conference, Final Transcript, 9/12/06	IAFP645423-31
1787	Affymetrix at Pacific Growth Equities 2005 Life Sciences Growth, Final Transcript, 6/06/05	IAFP645317-24
1788	Illumina website (www.illumina.com)	
1789	Illumina Products and Services Catalog 2005	IAFP641957-78
1790	Affymetrix News Release, July 21, 2004	
1791	Agilent Technologies website (www.agilent.com)	
1792	Applied Biosystems (www.appliedbiosystems.com)	
1793	“Affymetrix Dominates DNA Microarray Market,” PR Newswire, 8/31/05	IAFP645005-06
1794	“Power Tools for the Gene Age/Affymetrix Chips Digging Deeper into the Genome,” The San Francisco Chronicle, 2/07/05;	IAFP644908-13

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Trial Ex. No.	Document	Bates Range
1795	“Canon Plans to Commercialize DNA Chips for Medical Use,” The Wall Street Journal, 3/30/05	IAFP944903-04
1796	“Affymetrix, Inc. - SWOT Analysis,” DataMonitor Company Profiles, 4/23/05	
1797	“Sects, Strangers, and Drugs: Genotyping Gets Specific (Genetic Factors and Drug Developments),” Genomics and Proteomics, 9/01/05	IAFP644905-07
1798	“Affymetrix and Agilent Pursue New Microarray Markets,” Instrument Business Outlook, 12/15/05	IAFP644977-83
1799	Dickinson Exh. 560	IAFP541080-243
1800	Dickinson Exh. 559	Dickinson Exh. 559
1801	Affymetrix news release 3/1/03	
1802	Affymetrix news release 10/22/03	
1803	Affymetrix news release 9/28/05	
1804	Affymetrix news release 10/5/2005	
1805	Affymetrix news release, 10/24/05	
1806	Affymetrix news release 1/1/2006	
1807	Affymetrix news release 1/26/06	
1808	Affymetrix news release 2/7/06	
1809	Affymetrix Inc. Form 425, 6/1/05	AVI_127636-50
1810	Affymetrix Document	AVI_68794-815
1811	Brand Attitudes & Awareness Study: Focus on DNA Analysis Market, 7/31/04	AVI_82570-644
1812	Nussbacher, K. “Biopoly Money” Wired.com, June 2000	IAFP644919-21
1813	Van de Goor, Tom A. “A History of DNA Microarrays”, PharmaDD, 9/1/05	IAFP644914-18
1814	Illumina meeting presentation	IAFP585780-815
1815	“Market size and Growth Expectations,” Frost and Sullivan, 2002	AVI_3840-53
1816	“Power Tools for the Gene Age/Affymetrix Chips Digging Deeper into the Genome,”	IAFP644908-13

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Trial Ex. No.	Document	Bates Range
	San Francisco Chronicle, Feb. 7, 2005	
1817	"Illumina Reports Q4-03 Revenues in Line with Expectations," Baird U.S. Equity Research, 1/28/04	AVI_71741-49
1818	Email from Janet Lankard to Lydia Willing, 2/25/04	AVI_55635-36
1819	SWOT Analysis, Competitive Summit, 5/17/05	AVI_89173-75
1820	Email from Tracy Lane to Ted Young, et al., 6/2/04	AVI_56073-74
1821	Email from Carl Raimond to Gregg Fergus, 10/20/04	AVI_57538-39
1822	Email from Todd Pollard to Mathew Lorence, 2/3/05	AVI_83186-89
1823	Emails between Junya Tominaga and Tristan Orpin dated 12/05	IAFP640189
1824	Email from B. Singh to T. Orpin dated 10/20/05	IAFP640199-200
1825	Email from Raimond to Stratton, 7/22/04	AVI_57846-48
1826	Email from Gregory Marcus to Yap, 7/23/04	AVI_62796-97
1827	Commercial Monthly Report, 5/04	AVI_91901
1828	Perlegen Sciences, Inc. Form S-1, 4/10/06	
1829	Email from B. Kain to J. Stuelpnagel et al, 11/04	IAFP535717-19
1830	Email from Garsetti to Sean Hu and Bill Balch, 8/9/04	IAFP640177-79
1831	Email from Kyle O'Connor to Dickinson, 10/14/04; See Tab 96	IAFP640180
1832	Emails among Janet Lankard to Curtis Fideler, Neal Shea, Jesse Pope-Chapel, Joe Gray, 5/04	AVI_56451-53
1833	Lipshutz Exh. 71	Lipshutz Dep. Ex. 71
1834	Patent License Agreement between Affymetrix and Axon dated 4/8/04	AVI_134769-808
1835	Strategic Planning Meeting Notes dated 8/21/00	IAFP570148-53
1836	Affymetrix competitive position document on Illumina	AVI_55704-06
1837	Email from E. Pleshko to T. Orpin dated 11/29/05	IAFP640190
1838	Email from M. Munson to T. Orpin dated 11/29/05	IAFP640191

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TRIAL EXHIBIT LIST FOR ILLUMINA, INC.

Trial Ex. No.	Document	Bates Range
1839	Email from J. Garsetti to J.B. Fan dated 10/20/04	IAFP640181-82
1840	Emails from R. Laxman to T. Orpin et al dated 8/19/05	IAFP640185-86
1841	Email from E. Pleshko to B. Balch dated 4/14/04	IAFP640201-02
1842	"Highly Parallel SR Genotyping," J.-B. Fan, et al.	IAFP532361-67
1843	"Decoding Randomly Ordered DNA Arrays," Kevin Gunderson, et al	IAFP532400-07
1844	"A Novel, High-Performance Random Array Platform for Quantitative Gene Expression Profiling," Kuhn, et al.	IAFP532441-50
1845	Orpin Exh. 223	IAFP480266-314
1846	Orpin Exh. 307	Orpin Exh. 307
1847	Emails among McBean, Malloy, et al. 1/05	IAFP601532-34
1848	Emails from G. Fergus and G. Yap dated 3/20/05	AVI_81872-80
1849	Email from Deloukas to Orpin, 3/27/05	IAFP602964-66
1850	"Affy CFO Sheds New Light on Genotyping Woes, Introduces New Products at Investor Conference," 5/9/06, BioArraynews.com	IAFP644770-72
1851	R. Weinstein CV	Weinstein Expert Report Exhibits 1, 2
1852	Document entitled "Revenue and Net Profit Calculation: Illumina Proposal for Wellcome Trust Control Consortium May 11, 2005"	Weinstein Expert Report Exhibit 4
1853	Document entitled "Revenue and Net Profit Calculation: Orders from Eurys Genomics to Illumina 2005"	Weinstein Expert Report Exhibit 5
1854	Illumina financial summaries	IAFP643320-25
1855	Proposal for Wellcome Trust Case Control Consortium, April 27, 2005	IAFP644429-32
1856	Proposal for Wellcome Trust Control Consortium, May 11, 2005	IAFP644242-97
1857	Illumina Financial Tables	IAFP643963-66
1858	Illumina Financial Reports	IAFP641507 A-R
1859	5/9/2006 Bioarray News article	

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Trial Ex. No.	Document	Bates Range
1860	Affymetrix document "Illumina competitive positioning"	AVI_55292-99
1861	Affymetrix document entitled "Illumina competitive positioning: Technical arguments for expression"	AVI_55309-10
1862	Illumina - Competitive Review 2/10/2004	AVI_55595-618
1863	Affymetrix document entitled "Competitive Price Analysis"	AVI_74053-056
1864	Whole Genome SR Analysis: Positioning	AVI_78403-462
1865	Strategic Priorities	AVI_69082-087
1866	Competitor Overview	AVI_65230-235
1867	Spreadsheet re "Lost Orders to Illumina"	AVI_56188-89
1868	Spreadsheet re "Lost Orders to Illumina"	AVI_56475-76
1869	Spreadsheet re "Lost Orders to Illumina"	AVI_56481-82
1870		
1871	Affymetrix Spreadsheet	AVI_57137
1872	Affymetrix Spreadsheet	AVI_57707-08
1873	Affymetrix document entitled "Genotyping Products Positioning"	AVI_60780-826
1874	Genotyping Wars Continue, 10/2006	
1875	Pacific Growth Equities, Illumina, Inc. 10/2006	
1876	Leerink Jaffray, "Growing Concerns Over Data Quality from 500K."	IAFP645432-37
1877	Email from Selby Re: "Preliminary Agenda - 14th International Genome Sequencing and Analysis Conference"	AVI_068828-829
1878	Email from Raimond	AVI_056903-905
1879	Email from Raimond Re "FW: Max Lumke @ NHGRI has quote from Illumina"	AVI_058594-595
1880	Email from Nicholls Re: "FW: competitive activity genotyping"	AVI_072518-524
1881	Email from Lane Re: "Baird/ILMN: Reports Strong Q1, Fundamentals Improving, Upgrading to Outperform"	AVI_056575-576

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Trial Ex. No.	Document	Bates Range
1882	Email from Fergus Re: "FW: Illumina purchase at UC Davis"	AVI_055927-928
1883	Email from Fergus "Re: Fw: Q2"	AVI_083897-898
1884	Competitive Summit Meeting Minutes 5/17/05	AVI_073498-500
1885	Email from Nicholls Re: "ILMN - competitive update"	AVI_068730-737
1886	Email from Fergus Re: "FW Parallele"	AVI_056529-531
1887	Email from Siegel Re: "Debbie Nickerson and ILMN"	AVI_074367-369
1888	Email from Germann Re: "Quarter End"	AVI_080476-477
1889	Email from Marcus Re: "Myriad Genetics"	AVI_064118-119
1890	Email from Raimond Re: "500K positioning slides"	AVI_063045-046
1891	Email from Yap Re: "***FINAL PRODUCT PROFILES & CHOICE MATRICES FOR YOUR SIGN OFF TODAY!***"	AVI_056095-096
1892	Email from Affymetrix sales representative, June 25, 2004	AVI_064192-194
1893	Email from Affymetrix sales representative, September 13, 2004	AVI_078668-675
1894	Email from Affymetrix re Mendel Arrays Sets	AVI_177390-392
1895	Email from Affymetrix re 500K chips, September 28, 2005	AVI_132679-680
1896	Affymetrix spreadsheet	AVI_201588-591
1897	Affymetrix document re "Life Sciences Research Market"	AVI_068794-815
1898	Affymetrix document entitled "Illumina Sales Role Play"	AVI_074046-48
1899	Illumina document entitled "Gene Expression"	IAFP540473-513
1900	Affymetrix e-mails, 5/27/04	AVI_82152-54
1901	Affymetrix emails, 9/22/04	AVI_89157-58
1902	Affymetrix emails, 1/11/05	AVI_78505-11
1903	10/5/05 Affymetrix press release "Wellcome Trust Case Control Consortium Partners With Perlegen and Affymetrix to Search for Genetic Origins of Ten Complex Diseases"	
1904	Affymetrix emails, 9/18/04	AVI_80745-46

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Trial Ex. No.	Document	Bates Range
1905	Affymetrix emails re "Illumina info very sensitive," 11/27/02	AVI_64460-61
1906	Affymetrix emails re "10K opportunities," 3/18/03	AVI_56566-69
1907	Affymetrix emails re "10K opportunities"	AVI_64472-76
1908	Affymetrix emails re "Illumina at JHU," 6/30/03	AVI_63696-98
1909	Affymetrix emails re "Media FYI: John Hopkins," 8/29/03	AVI_63987-95
1910	Affymetrix emails re "Nakamura & ParAllele vs. Illumina," 10/27/03	AVI_64512
1911	Affymetrix emails re "Nakamura & ParAllele vs. Illumina," 10/27/03	AVI_64519-23
1912	Affymetrix emails re "The Nakamura lab," 11/7/03	AVI_64532-33
1913	Affymetrix emails re "MSKCC Genotyping -- Confidential INFO -- DO NOT CONTACT MSKCC," 11/25/03	AVI_64070-75
1914	Affymetrix emails re "Galileo visit 12/3," 11/25/02	AVI_62916
1915	Affymetrix emails re "Call with Galileo tomorrow morning," 11/25/03	AVI_58437-39
1916	Affymetrix emails re "Galileo conference call for 11/26/03"	AVI_63625-26
1917	Affymetrix emails re "Hooper," 12/1/03	AVI_58168-69
1918	Affymetrix emails re "Hooper," 12/3/03	AVI_64598-601
1919	Affymetrix's emails re "Galileo Postmortem," 12/4/03	AVI_62914-15
1920		
1921	Affymetrix emails re "Illumina competitive positioning," 12/7/03	AVI_63739-40
1922	Affymetrix emails re "MS linkage redo," 1/13/2004	AVI_64014-18
1923	Affymetrix emails re "Parallele oppro?," 12/23/2003	AVI_81633-34
1924	Affymetrix emails re "Thoughts on ILMN announcement," 1/14/2004	AVI_82228-32
1925	Illumina emails re "Duke," 4/19/04	IAFP598827-29
1926	Illumina emails re "Email from Bob Millikan," 4/9/2004	IAFP555009-010
1927	Illumina emails re "Affy spreading lies," 4/15/04	IAFP567057-58

EXHIBIT 7

TRIAL EXHIBIT LIST FOR ILLUMINA, INC.

Trial Ex. No.	Document	Bates Range
1928	Affymetrix emails re "Competitive situation!," 5/3/04	AVI_56588-90
1929	Affymetrix emails re "Illumina pricing," 5/5/04	AVI_89121-23
1930	Affymetrix emails re "John Todd Summary," 5/6/04	AVI_82150-51
1931	Affymetrix emails re "Illumina purchase at UC Davis," 5/12/04	AVI_56231-32
1932	Affymetrix emails re "Strategic help needed," 5/14/04	AVI_82353-54
1933		
1934	Illumina emails re "More info," 6/10/04	IAFP640174-76
1935	Affymetrix emails re "Martyn Smith doc," 5/6/04	AVI_55933-36
1936	Affymetrix document entitled "Opportunity/Threat outline: UC Berkeley, School of Public Health 3/12/2004"	AVI_55868-69
1937	Affymetrix emails re "Illumina purchase at UC Davis" dated 5/11/04	AVI_85323-24
1938	Affymetrix emails re "Lost sale," 6/18/04	AVI_64769-81
1939	Affymetrix emails re "Quarter end," 6/18/04	AVI_80476-77
1940	Affymetrix emails re "John Todd -- big opportunities"	AVI_64234-36
1941	Affymetrix emails re "Dr. Tashiro," 9/14/04	AVI_78600-05
1942	Affymetrix emails re "Dr. Tashiro proposal," 10/2/04	AVI_82180-81
1943	Affymetrix emails re "Dr. Tashiro," 1/11/05	AVI_78512-18
1944	Affymetrix emails re "Illumina," 10/20/04	AVI_82527-30
1945	Affymetrix emails re "500K TA," 10/27/04	AVI_81885-86
1946	Affymetrix emails re "Illumina competitive overview," 11/9/04	AVI_57491-92
1947	Affymetrix emails re "4c demand," 11/11/04	AVI_81821-23
1948	Affymetrix emails re "holding off ILMN -- HELP," 12/15/04	AVI_64985-86
1949	Affymetrix emails re "ILMN 360K panel," 2/9/05	AVI_57274-76
1950	Affymetrix emails re "ILMN earning report," 2/23/05	AVI_58753-54

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1951	Illumina emails re "T-Gen Beadstation order 11284"	IAFP640173
1952	Illumina document entitled "Leading Edge," 4/05	IAFP541080-104
1953	Illumina document entitled "Whole Genome Expression: Market Overview and Strategy"	IAFP543950-89
1954	Affymetrix document entitled "2002 Marketing Plan Version 4.0"	AVI_87891-46
1955	Affymetrix document entitled "Pricing/Selling Opportunities -- Data Collected end of May 2004"	AVI_65252-55
1956	Affymetrix document entitled "Analysis of the North American Spotted Microarray Market, November 19, 2002"	AVI_74918-97
1957	Affymetrix document entitled "2004 Brand Attitudes and Awareness Study: Focus on DNA Analysis Market"	AVI_82570-644
1958		
1959	7-24-02 Affymetrix Earnings Call Transcript	IAFP645122-33
1960	10-23-02 Affymetrix Earnings Call Transcript	IAFP645134-50
1961	1-29-03 Affymetrix Earnings Call Transcript	IAFP645151-65
1962	1-30-03 Affymetrix to Discuss Clinical Genomics Transcript	IAFP645166-74
1963	4-23-03 Affymetrix Earnings Call Transcript	IAFP645175-90
1964	7-23-03 Affymetrix Earnings Call Transcript	IAFP645191-206
1965	10-22-03 Affymetrix Earnings Call Transcript	IAFP645207-19
1966	1-12-04 Affymetrix JPMorgan 22 nd Annual Healthcare Conference Transcript	IAFP645220-25
1967	1-28-04 Affymetrix Earnings Call Transcript	IAFP645226-43
1968	4-21-04 Affymetrix Earnings Call Transcript	IAFP645244-58
1969	7-21-04 Affymetrix Earnings Call Transcript	IAFP645259-71
1970	1-11-05 Affymetrix JPMorgan 23 rd Annual Healthcare Conference Transcript	IAFP645272-77
1971	1-26-05 Affymetrix Earnings Call Transcript	IAFP613234-46

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TRIAL EXHIBIT LIST FOR ILLUMINA, INC.

Trial Ex. No.	Document	Bates Range
1972	1-27-05 Affymetrix at Piper Jaffray Healthcare Conference Transcript	IAFP645278-85
1973	3-31-05 Affymetrix at Lehman Brothers Global Healthcare Conference Transcript	IAFP645286-92
1974	4-21-05 Affymetrix Earnings Call Transcript	IAFP613116-33
1975	5-10-05 Affymetrix at Robert W. Baird & Co., Inc. Growth Stock Conference Transcript	IAFP645293-301
1976	5-31-05 Affymetrix Signs Agreement to Acquire ParAllele BioScience	IAFP645302-16
1977	6-06-05 Affymetrix at Pacific Growth Equities 2005 Life Sciences Growth Conference Transcript	IAFP645317-24
1978	6-14-05 Affymetrix Earnings Call Transcript	IAFP588707-18
1979	7-21-05 Affymetrix Earnings Call Transcript	IAFP645325-46
1980	9-27-05 Affymetrix Guidance Announcement Transcript	IAFP658954-64
1981	10-20-05 Affymetrix Earnings Call Transcript	IAFP645358-81
1982	1-05-06 Affymetrix Guidance Announcement Transcript	IAFP658932-53
1983	4-20-06 Affymetrix Earnings Call Transcript	IAFP645448-70
1984	7-31-06 Affymetrix Earnings Call Transcript	IAFP64404-22
1985	09-12-06 Affymetrix at Bear Stearns 19 th Annual Healthcare Conference Transcript	IAFP658988-96
1986	10-25-06 Affymetrix Earnings Call Transcript	10-25-06 Affymetrix Earnings Call Transcript
1987	Affymetrix 10-Q (11/9/06)	Affymetrix 10-Q (11/9/06)
1988	Affymetrix 10-Q (8/3/06)	Affymetrix 10-Q (8/3/06)
1989	Affymetrix 10-Q (5/10/06)	Affymetrix 10-Q (5/10/06)
1990	Affymetrix 10-Q (11/9/05)	AVI_126565-126621
1991	Affymetrix 10-Q (8/9/05)	AVI_127461-127504
1992	Affymetrix 10-Q (5/10/05)	AVI_127505-127460
1993	Affymetrix 10-Q (3/16/05)	AVI_127275-127416
1994	Affymetrix 10-Q (8/9/04)	Affymetrix 10-Q (8/9/04)

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
1995	Affymetrix 10-Q (5/10/04)	Affymetrix 10-Q (5/10/04)
1996	Affymetrix 10-Q (11/14/03)	AVI_126065-126124
1997	Affymetrix 10-Q (8/14/03)	AVI_126125-126175
1998	Affymetrix 10-Q (5/15/03)	AVI_126176-126387
1999	Affymetrix 10-Q (11/14/02)	AVI_125536-125575
2000	Affymetrix 10-Q (8/12/02)	AVI_125576-125615
2001	Affymetrix 10-Q (5/15/02)	AVI_125616-125658
2002	Affymetrix 10-Q (11/13/01)	AVI_125214-125221
2003	Affymetrix 10-Q (8/13/01)	AVI_125222-125261
2004	Affymetrix 10-Q (5/15/01)	AVI_125223-125272
2005	Affymetrix 10-Q (11/14/00)	AVI_123962-123996
2006	Affymetrix 10-Q (8/14/00)	AVI_123997-124025
2007	Affymetrix 10-Q (5/15/00)	AVI_124026-124053
2008	Affymetrix 10-K (8/3/06)	Affymetrix 10-K (8/3/06)
2009	Affymetrix 10-K (3/9/06)	AVI_213606-123753
2010	Affymetrix 10-K (3/16/05)	AVI_120189-120332
2011	Affymetrix 10-K (3/15/04)	AVI_120061-120188
2012	Affymetrix 10-K (3/31/03)	AVI_125958-126064
2013	Affymetrix 10-K (3/29/02)	AVI_125480-125535
2014	Affymetrix 10-K (3/30/01)	AVI_119639-119739
2015	Affymetrix 10-K (3/30/00)	AVI_119424-119638
2016	Affymetrix's Responses to Illumina's First Set of Interrogatories	
2017	Affymetrix's Supplemental Responses to Illumina's First Set of Interrogatories	
2018	Affymetrix's Second Supplemental Responses to Illumina's First Set of Interrogatories	

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TRIAL EXHIBIT LIST FOR ILLUMINA, INC.

Trial Ex. No.	Document	Bates Range
2019	Affymetrix's Responses to Illumina's Second Set of Interrogatories	
2020	Affymetrix's Supplemental Responses to Illumina's Second Set of Interrogatories	
2021	Affymetrix's Second Supplemental Responses to Illumina's Second Set of Interrogatories	
2022	Affymetrix's Responses to Illumina's Third Set of Interrogatories	
2023	Affymetrix's Responses to Illumina's Fourth Set of Interrogatories	
2024	Affymetrix's Supplemental Responses to Illumina's Fourth Set of Interrogatories	
2025	Affymetrix's Responses to Illumina's Fifth Set of Interrogatories	
2026	Affymetrix's Supplemental Responses to Illumina's Fifth Set of Interrogatories	
2027	Affymetrix's Responses to Illumina's First Set of Requests for Production	
2028	Affymetrix's Responses to Illumina's Second Set of Requests for Production	
2029	Affymetrix's Responses to Illumina's Third Set of Requests for Production	
2030	Affymetrix's Responses to Illumina's First Set of Requests for Admission	
2031	Affymetrix's Responses to Illumina's Second Set of Requests for Admission	
2032		
2033	Expert report(s) of Hubert Koster, Ph.d, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)	
2034	Expert report(s) of Robin Felder, Ph.d., submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)	
2035	Expert report(s) of Matthew Lynde, Ph.d, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)	
2036	Expert report(s) of George Gould, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)	
2037	10/28/91 Beckman letter re Affymetrix and Human Genome III meeting	IAFP6604-05
2038	10/24/91 Gasin letter re Meeting/Affymetrix Research	IAFP7335-36
2039	12/8/98 Foder Document	AFF-HYS15254-57

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Trial Ex. No.	Document	Bates Range
2040	Affymetrix Initial Disclosures HySeq. case	AFF-HYS15135-42
2041	10/17/97 Affymetrix S-3 Form	AVI121307-460
2042	Wagner Assignment Document	AG137-38
2043		
2044	US Patent App. "Methods for Processing Multiple Biological Chip Assays"	IAFP33-73
2045	Affymetrix's Markman Brief for HySeq litigation	AFFY-HYS27714-31
2046	US Patent No. 5,639,611	
2047	Affymetrix's Opposition to Isis EPO 0373,203	IAFP 5341-5434
2048	Declaration of Paul Silverman in Affymetrix/Synteni litigation	IAFP5982-84
2049	7/1/92 Letter from J. Tripp to R. Lipshutz of Wagner	AG464-65
2050	Copyright Assignment	AG865-69
2051	Hyseq's reply brief	AFFY-HYS11333-35
2052	12/6/91 Wagner Memorandum	AG1215-18
2053	2/14/92 Quote from Wagner to Affymetrix	AG471-72
2054	Sentrix Universal-96 Array Matrix (physical sample)	
2055	Sentrix Universal-16 BeadChip (physical sample)	
2056	Sentrix Human-1 Genotyping BeadChip (physical sample)	
2057	Sentrix Human-6 Expression BeadChip (physical sample)	
2058	Sentrix HumanRef-8 Expression BeadChip (physical sample)	
2059	Sentrix Mouse-6 Expression BeadChip (physical sample)	
2060	Sentrix MouseRef-8 Expression BeadChip (physical sample)	
2061	Sentrix Human Sampler-16 Expression BeadChip (physical sample)	
2062	Sentrix Human Sampler-96 Expression Array Matrix (physical sample)	
2063	Sentrix HumanTox-16 Expression BeadChip (physical sample)	

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
2064	Mouse Sampler-16 Expression BeadChip (physical sample)	
2065	Sentrix Mouse-96 Expression Array Matrix (physical sample)	
2066	Sentrix Arabidopsis Sampler-16 Expression BeadChip (physical sample)	
2067	Sentrix Arabidopsis-96 Expression Array Matrix (physical sample)	
2068	Sentrix Custom-16 Expression BeadChip (physical sample)	
2069	Sentrix Custom-96 Expression Array Matrix (physical sample)	
2070	Linkage IVb Panel (physical sample)	
2071	MHC Panel Set (physical sample)	
2072	Illumina's Beadchip device without beads (physical sample)	
2073	Illumina's Beadchip device with beads (physical sample)	
2074	Physical sample of product packaging	
2075	Physical sample of product packaging	
2076	Physical sample of product packaging	
2077	Physical sample of product packaging	
2078	Physical sample of product packaging	
2079	Physical sample of product packaging	
2080	Physical sample of product packaging	
2081	Physical sample of product packaging	
2082	Physical sample of product packaging	
2083	Physical sample of product packaging	
2084	Physical sample of product packaging	
2085	Physical sample of product packaging	
2086	Physical sample of product packaging	
2087	Physical sample of product packaging	

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
2088	Physical sample of product packaging	
2089	Physical sample of product packaging	
2090	Physical sample of product packaging	
2091	Physical sample of product packaging	
2092	Physical sample of product packaging	
2093	Physical sample of product packaging	
2094		
2095	Physical sample of Illumina's Sentrix Array Matrix hybridization chamber	N/A
2096	Photographs of Illumina's Sentrix Array Matrix hybridization chamber	ILPRD14, 16-20, 24
2097		
2098	Physical sample of Illumina's Beadchip hybridization chamber	
2099	Photographs of Illumina's Beadchip hybridization chamber	ILPRD5-7, 9, 10, 12
2100		
2101		
2102		
2103	Gordon Research Conferences, 1999 Summer and Fall Meetings. Science 1999; 283, Cover, 1220, 1356.	
2104	Simon-Sanchez, et al. Genome-wide SR assay reveals structural genomic variation, extended homozygosity and cell-line induced alterations in normal individuals. Human Molecular Genetics 2007; 16: 1-14.	
2105	Duerr, et. al. A Genome-Wide Association Study Identifies IL23R as an Inflammatory Bowel Disease Gene. Science 2006; 314:1461-1463.	
2106	Plaque: North American Drug Discovery Technologies Product Innovation of the Year Award, 2006.	
2107	Plaque: Cover of Science 2006; 283.	
2108	Frost & Sullivan, 2006 North American Drug Discovery Technologies Product	

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
	Innovation of the Year Award; Award Recipient: Illumina, Inc. (4 pp.)	
2109	The International HapMap Consortium. The International HapMap Project. Nature 2003; 426: 789-796.	
2110	The International HapMap Consortium. A Haplotype Map of the Human Genome. Nature 2005; 437:1299-1320.	
2111	Wadman M. The Chips Are Down. Nature 2006;444:256-257.	
2112	License Agreement between Affymetrix, Inc. and PerkinElmer Inc. (DX 531)	AVI_203223-54
2113	Alan Sherr Email re Correction.	AVI_203692
2114	Common Terms Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208281-304
2115	Instrument and Chip Supply Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208305-31
2116	Instrument Agency Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208332-52
2117	Diagnostic Product and Instrument Agency Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208353-67
2118	Standstill Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208368-73
2119	Research & Development Collaboration Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208374-89
2120	Beads (physical sample)	
2121	Beads with oligos (physical sample)	
2122	Glass fiber bundles without beads (physical sample)	
2123	Glass fiber bundles with beads without oligos (physical sample)	
2124	Glass fiber bundles with beads with oligos (physical sample)	
2125	Illumina's Sentrix Array Matrix without beads (physical sample)	
2126	Illumina's Sentrix Array Matrix with beads (physical sample)	

EXHIBIT 7**TRIAL EXHIBIT LIST FOR ILLUMINA, INC.**

Trial Ex. No.	Document	Bates Range
2127	Affymetrix's Human Genome U133A 2.0 Array (physical sample)	
2128	Affymetrix's Human Genome Focus Array (physical sample)	
2129	Affymetrix's GeneChip Human Mapping 100K Array (physical sample)	
2130	Affymetrix's GeneChip Human Mapping 500K Array (physical sample)	
2131	Affymetrix's GeneChip Human Mapping 10K Array (physical sample)	
2132	Affymetrix's GeneChip Custom 1.5 (physical sample)	
2133	Affymetrix's Universal 3K Tag Array (physical sample)	
2134	E-mail re Array Patent List	AVI_202266
2135	Email re Revised Term Sheet	AVI_202242
2136	First Amendment to License Agreement	AVI_208088-93
2137	Email re AFFY Questions	AVI_204293
2138	Amendment 4 to the License Agreement between Affymetrix, Inc. and MWG-Biotech AG	AVI_203595-6
2139	Amendment 5 to the License Agreement between Affymetrix, Inc. and MWG-Biotech AG	AVI_202780-1
2140	Meeting Agenda	AVI_203597
2141	Email re Meeting Follow-up	AVI_202747
2142	Email re Document, etc.	AVI_203166-67
2143	Document entitled "Affymetrix Conference Call"	AVI_203295
2144	Email re Spectral Genomics Negotiation Version of Revised Terms and spreadsheet	AVI_202985-6
2145	Email re GMS	AVI_203070-72
2146	U.S. Patent No. 4,263,504 (Thomas)	

EXHIBIT 8

EXHIBIT 8**Illumina, Inc.'s Responses To Affymetrix, Inc.'s Objections To Illumina, Inc.'s List Of Exhibits That Illumina Intends To Offer At Trial**

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections¹	Illumina's Response to Affymetrix's Objection²
1	U.S. Patent No. 5,545,531	AVI_38924-38 IAFP1-15		
2	U.S. Patent No. 5,545,531 File Wrapper (U.S. App. No. 08/476,850)	IAFP16-136		
3	U.S. Patent No. 5,795,716	AVI_39650-99 IAFP137-181		
4	U.S. Patent No. 5,795,716 File Wrapper (U.S. App. No. 08/327,525)	AVI_1-429; IAFP182-654		
5	U.S. Patent No. 6,355,432	IAFP655-709		
6	U.S. Patent No. 6,355,432 File Wrapper (U.S. App. No. 09/585,659)	IAFP710-1240		
7	U.S. App. No. 09/362,089	IAFP19698-20394	402, 403	R
8	U.S. Patent No. 6,197,506	AVI_41940-988	402, 403	R
9	U.S. Patent No. 6,197,506 File Wrapper (U.S. App. No. 09/056,927)	IAFP17577-8085	402, 403, 802, ID, MD	R, HE, NH, SD ³
10	U.S. Patent No. 5,800,992	IAFP653774-819	402, 403	R

¹ See below for key to Affymetrix objections

² See below for key to Illumina objections

³ Illumina notes that Affymetrix has raised an "ID" objection which is neither based on any Federal Rule of Evidence nor based on any legitimate grounds for objecting to Illumina's trial exhibits. Affymetrix's arbitrary and capricious application of this "objection" is confusing and seemingly unfounded. If Affymetrix ever provides a clear and legitimate basis for this "objection," Illumina renews its right to respond accordingly.

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
11	U.S. Patent No. 5,800,992 File Wrapper (U.S. App. No. 08/670,118)	IAFP00012006-413	402, 403, 802, ID, MD	R, HE, NH, SD
12	U.S. App. No. 08/168,904	IAFP13528-4133	402, 403	R
13	U.S. App. No. 07/624,114	IAFP16538-695		
14	U.S. Patent No. 5,143,854	AVI_38412-38 IAFP655448-655487 IAFP658844-658883 IAFP594726-65 IAFP7295-334		
15	U.S. Patent No. 5,143,854 File Wrapper (U.S. App. No. 07/492,462)	IAFP15218-699	402, 403, 802, ID, MD	R, HE, NH, SD
16	U.S. App. No. 07/362,901	IAFP15081-217	402, 403	R
17	U.S. Patent No. 6,399,365	IAFP1241-300		
18	U.S. Patent No. 6,399,365 File Wrapper (U.S. App. No. 09/907,196)	IAFP1301-590		
19	U.S. Patent No. 6,287,850	AVI_42806-863	402, 403	R
20	U.S. Patent No. 6,287,850 File Wrapper (U.S. App. No. 09/302,052)	IAFP18823-9097	402, 403, 802, ID, MD	R, HE, NH, SD
21	U.S. Patent No. 5,945,334	AVI_40535-92	402, 403	R
22	U.S. Patent No. 5,945,334 File Wrapper (U.S. App. No. 08/485,452)	IAFP16818-7161	402, 403, 802, ID, MD	R, HE, NH, SD
23	U.S. App. No. 08/255,682	IAFP630971-1012	402, 403	R
24	U.S. Patent No. 6,646,243	AVI_47056-106		
25	U.S. Patent No. 6,646,243 File Wrapper (U.S. App. No. 10/098,203)	AVI_731-1050		
26	U.S. Patent No. 6,406,957	AVI_44396-4444	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
27	U.S. Patent No. 6,406,957 File Wrapper (U.S. App. No. 09/690,191)	IAFP19388-697	402, 403, 802, ID, MD	R, HE, NH, SD
28	U.S. Patent No. 6,329,143	AVI_43449-93	402, 403	R
29	U.S. Patent No. 6,329,143 File Wrapper (U.S. App. No. 09/129,470)	IAFP19098-387	402, 403, 802, ID, MD	R, HE, NH, SD
30	U.S. Patent No. 6,225,625	AVI_42160-200	402, 403	R
31	U.S. Patent No. 6,225,625 File Wrapper (U.S. App. No. 08/456,598)	IAFP18086-552	402, 403, 802, ID, MD	R, NH, HE, SD
32	U.S. Patent No. 5,445,934	IAFP653504-41 IAFP619956-93	402, 403	R
33	U.S. Patent No. 5,445,934 File Wrapper (U.S. App. No. 07/954,646)	IAFP15700-16007	402, 403, 802, ID, MD	AV(IAFP15700-16007), R, HE, NH, SD
34	U.S. Patent No. 5,405,783	IAFP655387-403	402, 403	R
35	U.S. Patent No. 5,405,783 File Wrapper (U.S. App. No. 07/850,356)	IAFP16008-344	402, 403, 802, ID, MD	R, NH, HE, SD
36	U.S. Patent No. 6,140,044	IAFP655924-77	402, 403	R
37	U.S. Patent No. 6,140,044 File Wrapper (U.S. App. No. 08/528,173)	IAFP14134-821	402, 403, 802, ID, MD	R, NH, HE, SD
38	U.S. Patent No 5,974,164	AVI_40661-719	402, 403	R
39	U.S. Patent No. 5,974,164 File Wrapper (U.S. App. No. 08/531,137)	IAFP17162-576	402, 403, 802, ID, MD	R, NH, HE, SD
40	U.S. Patent No. 6,242,180	AVI_42375-433	402, 403	R
41	U.S. Patent No. 6,242,180 File Wrapper (U.S. App. No. 09/158,765)	IAFP18553-822	402, 403, 802, ID, MD	R, NH, HE, SD
42	U.S. Patent No. 6,607,887	IAFP1591-1648	402, 403	R
43	U.S. Patent No. 6,607,887 File Wrapper (U.S. App. No. 09/796,071)	AVI_430-730	402, 403, 802, ID, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
44	U.S. Patent No. 6,440,667	AVI_44896-951	402, 403	R
45	U.S. Patent No 6,440,667 File Wrapper	IAFP19698-20394	402, 403, 802, ID, MD	R, NH, HE, SD
46	U.S. Patent No. 6,355,431	IAFP659099-140	402, 403	R
47	U.S. Patent No. 6,396,995	IAFP659141-67	402, 403	R
48	U.S. Patent No. 6,429,027	IAFP659168-86	402, 403	R
49	U.S. Patent No. 6,544,732	IAFP659529-47	402, 403	R
50	U.S. Patent No. 6,620,584	IAFP659187-222	402, 403	R
51	U.S. Patent No. 6,663,832		NP, 402, 403	R, AV
52	U.S. Patent No. 6,770,441	IAFP659223-75	402, 403	R
53	U.S. Patent No. 6,812,005		402, 403, NP	R, AV
54	U.S. Patent No. 6,846,460		402, 403, NP	R, AV
55	U.S. Patent No. 6,858,394	IAFP659276-304	402, 403	R
56	U.S. Patent No. 6,355,431		NP, 402, 403	R, AV
57	U.S. Patent No. 6,890,741		NP, 402, 403	R, AV
58	U.S. Patent No. 6,890,764		NP, 402, 403	R, AV
59	U.S. Patent No. 6,913,884		NP, 402, 403	R, AV
60	U.S. Patent No. 6,942,968	IAFP659305-42	402, 403	R
61	U.S. Patent No. 6,998,274	IAFP659548-65	402, 403	R
62	U.S. Patent No. 7,025,935		NP, 402, 403	R, AV
63	U.S. Patent No. 7,033,754		NP, 402, 403	R, AV
64	U.S. Patent No. 7,035,740		NP, 402, 403	R, AV
65	U.S. Patent No. 7,040,959		NP, 402, 403	R, AV
66	U.S. Patent No. 7,060,431		NP, 402, 403	R, AV
67	U.S. Patent No. 7,092,160		NP, 402, 403	R, AV

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
68	U.S. Patent No. 7,106,513		NP, 402, 403	R, AV
69	U.S. App. No. 2002/177,141A1	AVI_135253-296	402, 403	R
70	U.S. App. No. 2002/187,515A1		NP, 402, 403	R, AV
71	U.S. App. No. 2003/003,490A1		NP, 402, 403	R, AV
72	U.S. App. No. 2003/175,773A1		NP, 402, 403	R, AV
73	U.S. App. No. 2003/198,573A1		NP, 402, 403	R, AV
74	U.S. App. No. 2004/185,482A1		NP, 402, 403	R, AV
75	U.S. App. No. 2004/185,483A1		NP, 402, 403	R, AV
76	U.S. App. No. 2004/224,352A1		NP, 402, 403	R, AV
77	U.S. App. No. 2004/224,353A1		NP, 402, 403	R, AV
78	U.S. App. No. 2004/259,100A1		NP, 402, 403	R, AV
79	U.S. App. No. 2004/259,106A1		NP, 402, 403	R, AV
80	U.S. App. No. 2005/037,393A1		NP, 402, 403	R, AV
81	U.S. App. No. 2005/053,980A1		NP, 402, 403	R, AV
82	U.S. App. No. 2005/059,048A1		NP, 402, 403	R, AV
83	U.S. App. No. 2005/164,246A1		NP, 402, 403	R, AV
84	U.S. App. No. 2005/181,394A1		NP, 402, 403	R, AV
85	U.S. App. No. 2005/181,440A1		NP, 402, 403	R, AV
86	U.S. App. No. 2005/191,698A1		NP, 402, 403	R, AV
87	U.S. App. No. 2005/216,207A1		NP, 402, 403	R, AV
88	U.S. App. No. 2005/244,870A1		NP, 402, 403	R, AV
89	U.S. App. No. 2005/266,432A1		NP, 402, 403	R, AV
90	U.S. App. No. 2006/0192,58A1		NP, 402, 403	R, AV
91	U.S. App. No. 2006/057,729A1		NP, 402, 403	R, AV

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
92	U.S. App. No. 2006/118,630A1		NP, 402, 403	R, AV
93	U.S. App. No. 2006/119,913A1		NP, 402, 403	R, AV
94	U.S. App. No. 2006/132,877A1		NP, 402, 403	R, AV
95	U.S. App. No. 2006/134,324A1		NP, 402, 403	R, AV
96	U.S. App. No. 2006/134,650A1		NP, 402, 403	R, AV
97	U.S. App. No. 2006/139,635A1		NP, 402, 403	R, AV
98	U.S. App. No. 2006/209,309A1		NP, 402, 403	R, AV
99	U.S. App. No. 2006/216,721A1		NP, 402, 403	R, AV
100	U.S. App. No. 2006/224,529A1		NP, 402, 403	R, AV
101	U.S. App. No. 2006/275,782A1		NP, 402, 403	R, AV
102	U.S. Patent No. 7,125,674		NP, 402, 403	R, AV
103	U.S. Patent No. 3,825,410 (Bagshawe)	IAFP655107-18	402, 403	R
104	U.S. Patent No. 4,031,197 (Marinkovich)	IAFP655119-26	402, 403	R
105	U.S. Patent No. 4,039,288 (Moran)	IAFP655127-35	402, 403	R
106	U.S. Patent No. 4,046,750 (Rembaum)	IAFP656028-36	402, 403	R
107	U.S. Patent No. 4,145,406 (Schick)	IAFP655136-52	402, 403	R
108	U.S. Patent No. 4,159,875 (Hauser)	IAFP655153-57	402, 403	R
109	U.S. Patent No. 4,225,410 (Pace)	IAFP656037-53	402, 403	R
110	U.S. Patent No. 4,258,001 (Pierce)		402, 403, NP	R, AV
111	U.S. Patent No. 4,259,223 (Rembaum)	IAFP656054-61	402, 403	R
112	U.S. Patent No. 4,267,234 (Rembaum)	IAFP656062-77	402, 403	R
113	U.S. Patent No. 4,427,415 (Cleveland)	IAFP655158-64	402, 403	R
114	U.S. Patent No. 4,430,299 (Horne)	IAFP655165-81	402, 403	R
115	U.S. Patent No. 4,542,102 (Dutttagupta)	IAFP655182-87	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
116	U.S. Patent No. 4,595,562 (Liston)	IAFP655188-204	402, 403	R
117	U.S. Patent No. 4,608,231 (Witty)	IAFP655205-11	402, 403	R
118	U.S. Patent No. 4,675,299 (Witty)	IAFP655212-21	402, 403	R
119	U.S. Patent No. 4,676,951 (Armes)	IAFP655222-46	402, 403	R
120	U.S. Patent No. 4,678,894 (Shafer)	IAFP655247-65	402, 403	R
121	U.S. Patent No. 4,713,326 (Dattagupta)	IAFP658884-90	402, 403	R
122	U.S. Patent No. 4,719,087 (Hanaway)	IAFP655266-88	402, 403	R
123	U.S. Patent No. 4,719,615 (Feyrer)	IAFP655289-301	402, 403	R
124	U.S. Patent No. 4,797,355 (Stabinsky)	IAFP655302-07	402, 403	R
125	U.S. Patent No. 4,798,706 (Brigati)	IAFP656078-86	402, 403	R
126	U.S. Patent No. 4,829,010 (Chang)	IAFP656087-92	402, 403	R
127	U.S. Patent No. 4,837,168 (de Jaeger)	IAFP656093-106	402, 403	R
128	U.S. Patent No. 4,877,965 (Dandliker)	IAFP655308-30	402, 403	R
129	U.S. Patent No. 4,889,427 (Van Veen)	IAFP655331-43	402, 403	R
130	U.S. Patent No. 4,933,147 (Hollar)	IAFP655344-55	402, 403	R
131	U.S. Patent No. 4,981,783 (Augenlicht)	IAFP655387-403	402, 403	R
132	U.S. Patent No. 4,997,278 (Finlan)	IAFP655404-12	402, 403	R
133	U.S. Patent No. 5,028,545 (Soini)	IAFP655413-18	402, 403	R
134	U.S. Patent No. 4,963,815 (Hafeman)	IAFP655356-86	402, 403	R
135	U.S. Patent No. 5,035,863 (Finlan)	IAFP655419-32	402, 403	R
136	U.S. Patent No. 5,047,633 (Finlan)	IAFP655433-47	402, 403	R
137	U.S. Patent No. 5,112,736 (Caldwell)	IAFP653421-33	402, 403	R
138	U.S. Patent No. 5,156,810 (Ribi)	IAFP655488-500	402, 403	R
139	U.S. Patent No. 5,171,534 (Smith)	IAFP655501-14	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
140	U.S. Patent No. 5,173,260 (Zander)	IAFP655515-19	402, 403	R
141	U.S. Patent No. 5,173,747 (Boiarski)	IAFP655520-32	402, 403	R
142	U.S. Patent No. 5,196,305 (Findlay)	IAFP653434-45	402, 403	R
143	U.S. Patent No. 5,215,889 (Schultz)	IAFP658039-79	402, 403	R
144	U.S. Patent No. 5,219,763 (Van Hoegaerden)	IAFP655533-44	402, 403	R
145	U.S. Patent No. 5,229,297 (Schnipelsky)	IAFP655545-67	402, 403	R
146	U.S. Patent No. 5,266,498 (Tarcha)	IAFP655568-85	402, 403	R
147	U.S. Patent No. 5,252,743 (Barrett)	IAFP658080-104	402, 403	R
148	U.S. Patent No. 5,270,006 (Uchigaki)	IAFP655586-99	402, 403	R
149	U.S. Patent No. 5,288,514 (Ellman)	IAFP653446-70	402, 403	R
150	U.S. Patent No. 5,310,469 (Cunningham)	IAFP655600-15	402, 403	R
151	U.S. Patent No. 5,320,808 (Holen)	IAFP655616-51	402, 403	R
152	U.S. Patent No. 5,348,855 (Dattagupta)	IAFP653471-89	402, 403	R
153	U.S. Patent No. 5,362,866 (Arnold, Jr.)	IAFP656107-26	402, 403	R
154	U.S. Patent No. 5,380,489 (Sutton)	IAFP655652-68	402, 403	R
155	U.S. Patent No. 5,382,512 (Smethers)	IAFP653490-503	402, 403	R
156	U.S. Patent No. 5,384,261 (Winkler)	IAFP655669-84	402, 403	R
157	U.S. Patent No. 5,427,908 (Dower)	IAFP658105-15	402, 403	R
158	U.S. Patent No. 5,436,327 (Southern)	IAFP655685-90	402, 403	R
159	U.S. Patent No. 5,445,934 (Fodor)	IAFP653504-41	402, 403	R
160	U.S. Patent No. 5,489,678 (Fodor)	AVI38762-801	402, 403	R
161	U.S. Patent No. 5,492, 840 (Malmqvist)	IAFP655691-704	402, 403	R
162	U.S. Patent No. 5,532,128 (Eggers)	IAFP656127-41	402, 403	R
163	U.S. Patent No. 5,547,839 (Dower)	IAFP658116-42	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
164	U.S. Patent No. 5,571,639 (Hubbell)	IAFP653542-67	402, 403	R
165	U.S. Patent No. 5,573,950 (Graessle)	IAFP655724-39	402, 403	R
166	U.S. Patent No. 5,578,832 (Trulson)	IAFP653568-99	402, 403	R
167	U.S. Patent No. 5,639,603 (Dower)	IAFP653700-32	402, 403	R
168	U.S. Patent No. 5,700,637 (Southern)	IAFP13107-17	402, 403	R
169	U.S. Patent No. 5,744,305 (Fodor)	IAFP653733-73	402, 403	R
170	U.S. Patent No. 5,807,522 (Brown)	IAFP655751-68	402, 403	R
171	U.S. Patent No. 5,976,896 (Kumar)	IAFP655769-816	402, 403	R
172	U.S. Patent No. 6,063,339 (Tisone)	IAFP656142-74	402, 403	R
173	U.S. Patent No. 6,103,463 (Chetverin)	IAFP655817-23	402, 403	R
174	U.S. Patent No. 6,270,961 (Drmanac)	IAFP655978-98	402, 403	R
175	U.S. Patent No. 6,403,957 (Fodor)	AVI44396-444	402, 403	R
176	U.S. Patent No. 7,015,046 (Wohlstadter)	IAFP656174-283	402, 403	R
177	Prosecution History of U.S. Application No. 07/362,901 (Pirrung)	IAFP15080-15217	402, 403, 802, ID, MD	R, NH, HE, SD
178	Prosecution History of U.S. Application No. 07/404,920 (Schultz)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
179	Prosecution History of U.S. Application No.07/624,120 (Fodor)	IAFP632651-737	402, 403, 802, ID, MD	R, NH, HE, SD
180	Prosecution History of U.S. Application No.07/626,730 (Dower)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
181	Prosecution History of U.S. Application No.07/850,356 (Pirrung)	IAFP15700-16007	402, 403, 802, ID, MD	R, NH, HE, SD
182	Prosecution History of U.S. Application No.07/954,646 (Fodor)	IAFP16008-344	402, 403, 802, ID, MD	R, NH, HE, SD
183	Prosecution History of U.S. Application	IAFP632601-50	402, 403, 802, ID, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	No.08/082,937 (Fodor)			
184	Prosecution History of U.S. Application No.08/127,420 (Drmanac)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
185	Prosecution History of U.S. Application No.08/168,904 (Fodor)	IAFP13528-14133	402, 403, 802, ID, MD	R, NH, HE, SD
186	Prosecution History of U.S. Application No.08/249,188 (Hubbell)	IAFP 632738-84	402, 403, 802, ID, MD	R, NH, HE, SD
187	Prosecution History of U.S. Application No. 08/390,272 (Fodor)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
188	Prosecution History of U.S. Application No.08/456,598 (Pirrung)	IAFP18086-552	402, 403, 802, ID, MD	R, SD, NH, HE
189	Prosecution History of U.S. Application No.08/473,010 (Chetverin)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
190	Prosecution History of U.S. Application No.08/630,051 (Rava)		NP, 402, 403, 802, ID, MD	R, NH, HE, SD, AV
191	Prosecution History of U.S. Application No.08/670,118 (Fodor)	IAFP12006-413	NP, 402, 403, 802, ID, MD	AV(IAFP12006-413), R, NH, HE, SD
192	Prosecution History of U.S. Application No.09/129,470 (Pirrung)	IAFP19098-387	402, 403, 802, ID, MD	R, NH, HE, SD
193	Prosecution History of U.S. Application No.09/247,430 (Rava)	IAFP 631701-930	NP, 402, 403, 802, ID, MD	AV(IAFP 631701-930), R, NH, HE, SD
194	Prosecution History of U.S. Application No.09/362,089 (Fodor)	IAFP19698-20394	402, 403, 802, ID, MD	R, NH, HE, SD
195	Prosecution History of U.S. Application No.09/585,659 (Fodor)	IAFP710-1240	402, 403, 802, ID, MD	R, NH, HE, SD
196	Prosecution History of U.S. Application No.09/690,191 (Fodor)	IAFP19388-697	402, 403, 802, ID, MD	R, NH, HE, SD
197	Prosecution History of U.S. Application No.09/907,196 (Besemer)	IAFP1301-1590		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
198	Prosecution History of U.S. Application No.10/098,203 (Fodor)	IAFP1974-2293	402, 403, 802, ID, MD	R, NH, HE, SD
199	Prosecution History of U.S. Application No.10/098,484 (Fodor)	IAFP645471-7004	402, 403, 802, ID, MD	R, NH, HE, SD
200	Prosecution History of U.S. Application No.10/125,428 (Fodor)	IAFP647005-9516	402, 403, 802, ID, MD	R, NH, HE, SD
201	Prosecution History of U.S. Application No.10/125,460 (Fodor)	IAFP649517-50931	402, 403, 802, ID, MD	R, NH, HE, SD
202	Prosecution Histories of U.S. Application No.10/125,530 (Fodor)	IAFP650932-3420	402, 403, 802, ID, MD	R, NH, HE, SD
203	U.S. Patent Application Publication No. 2004/0029115 A9	IAFP655999-6027	402, 403	R
204	WO Patent Application No. 84/01031 (Ekins)	IAFP656970-85	402, 403	R
205	WO Patent Application No.84/03151 (Chang)	IAFP656478-518	402, 403	R
206	WO Patent Application No.85/01051 (Arnold, Jr.)	IAFP656372-421	402, 403	R
207	WO Patent Application No.86/03782 (Malcolm)	IAFP656519-37	402, 403	R
208	WO Patent Application No.88/01302 (Gingeras)	IAFP656422-77	402, 403	R
209	WO Patent Application No.89/10977 (Southern)	IAFP656538-68	402, 403	R
210	WO Patent Application No.90/04652 (Macevicz)	IAFP658891-930	402, 403	R
211	WO Patent Application No.90/15070 (Pirrung)	IAFP656569-654	402, 403	R
212	WO Patent Application No.92/10092 (Fodor)	IAFP656986-7099	402, 403	R
213	WO Patent Application No.92/10588 (Fodor)	IAFP656655-772	402, 403	R
214	WO Patent Application No.93/17126 (Chetverin)	IAFP656773-876	402, 403	R
215	WO Patent Application No.95/09248 (Drmanac)	IAFP656877-969 IAFP596185-277	402, 403	R
216	WO Patent Application No.95/11995 (Chee)	IAFP657487-709	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
217	WO Patent Application No.97/10365 (Lockhart)	IAFP657100-226	402, 403	R
218	WO Patent Application No.97/27317 (Lockhart)	IAFP657227-441	402, 403	R
219	Canadian Patent (CA) 1 248 873 (Tripatzis)	IAFP2294-313	402, 403	R
220	European Patent (EP) Application No. EP 0 130 739 (Urdea)	IAFP654053-86	402, 403	R
221	European Patent (EP) Application No. EP 0 235 726 (Dattagupta)	IAFP654087-115	402, 403	R
222	European Patent (EP) Application No. EP 0 238 332 (Goodson)	IAFP654116-27	402, 403	R
223	European Patent (EP) Application No. EP 0 373 203 B1 (Southern)	IAFP654128-44	402, 403	R
224	European Patent (EP) Application No. EP 0 381 501 A2 (Schnipelsky)	IAFP654145-69	402, 403	R
225	European Patent (EP) Application No. EP 0 392 546 A2 (Drmanac)	IAFP654170-654185; IAFP2314-29	402, 403	R
226	European Patent (EP) Application No. EP 0 396 116 A2 (Pope)	IAFP654189-206	402, 403	R
227	Great Britain (GB) Publications GB 2 129 551A (Mochida)	IAFP654229-36	402, 403	R
228	Great Britain (GB) Publications GB 1 561 042 (Coulter)	IAFP654224-28	402, 403	R
229	Absalon et al. Bleomycin mediated degradation of DNA-RNA hybrids does not involve C-1' chemistry. Nucleic Acids Research 1992;20:4179-4185	IAFP653820-26	402, 403, 802	R, NH, HE
230	Abstracts of papers presented at the 1994 meeting on Genome Mapping & Sequencing, Cold Spring Harbor Laboratory	IAFP12968-69	402, 403, 802, ID, MD	R, NH, HE, SD
231	Adams et al. Pentafluorobenzoylation of O4-Ethylthymidine and Analogues by Phase-Transfer	IAFP653827-30	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Catalysis for Determination by Gas Chromatography with Electron Capture Detection. Anal. Chem. 1986			
232	Agard et al. Quantitative Analysis of Electrophoretograms. Anal. Biochem 1981;111:257	IAFP654842-53	402, 403, 802	R, NH, HE
233	Aller R, Elevitch F. Clinics in Laboratory Medicine;11		NP, 402, 403, ID, 802	R, NH, HE, AV
234	Amit et al. Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis. 2-Nitrobenzyloxycarbonylamino and 6-Nitroveratryloxycarbonylamino Derivatives. J. Org. Chem. 1974;39:192-196	IAFP3907-11		
235	Arndt-Jovin et al. Immunofluorescence Localization of Z-DNA in Chromosomes: Quantitation by Scanning Microphotometry and Computer-assisted Image Analysis. The Journal of Cell Biology 1985;101:1422-1433	IAFP653840-51	402, 403, 802	R, NH, HE
236	Bains W, Smith GZ. A novel method for nucleic acid sequence determination. J Theor Biol 1988;135:303-7	IAFP653852-56	402, 403, 802	R, NH, HE
237	Barrows et al. Measurement of fluorescence using digital integration of video images. J Histochem Cytochem 1984;32:741-746	IAFP653857-62	402, 403, 802	R, NH, HE
238	Bauman et al. A new method for fluorescence microscopical localization of specific DNA sequences by in situ hybridization of fluorochrome labeled RNA. Exp Cell Res 1980;128:485-490	IAFP653863-68	402, 403, 802	R, NH, HE
239	Beattie et al. REVIEW: Gene Synthesis Technology: Recent Developments and Future Prospects. Biotechnology and Applied Biochemistry 1988;10:510-521	IAFP653869-80	402, 403, 802	R, NH, HE
240	Binnig G, Rohrer H. The Scanning Tunneling Microscope: A new kind of microscope reveals the	IAFP653881-87	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	structures of surfaces atom by atom. The instrument's versatility may extend to investigators in the fields of physics, chemistry and biology. Sci Am 1985:50 -56			
241	Blond-Elguindi et al. Affinity panning of a library of peptides displayed on bacteriophages reveals the binding specificity of BiP. Cell 1993;75:717-728	IAFP653888-99	402, 403, 802	R, NH, HE
242	Blouke et al. 800x800 charge-coupled device image sensor. Optical Engineering 1983;22:607-614	IAFP653900-07	402, 403, 802	R, NH, HE
243	Bohmer RM. Flow-Cytometric Determination of Fluorescence Ratios between Differently Stained Particles Is Dependent on Excitation Intensity. J Histochem Cytochem 1985;33:974-976	IAFP653908-10	402, 403, 802	R, NH, HE
244	Botstein D et al. Construction of a Genetic Linkage Map in Man Using Restriction Fragment Length Polymorphisms. Am J Hum Genet 1980	IAFP653911-28	402, 403, 802	R, NH, HE
245	Bright GR, Taylor DL. Imaging at low light level in fluorescence microscopy. Applications of fluorescence in the biomedical sciences. Eds Taylor DL, Wagoner AS, Lanni F, Murphy RF, Birge RR. New York: AR Liss, 1986:257-88	IAFP653929-60	402, 403, 802	R, NH, HE
246	Britten RJ. Complementary strand association between nucleic acids and nucleic acid gels. Science 1963;142:963-965	IAFP653961-63	402, 403, 802	R, NH, HE
247	Carruthers. Gene Synthesis Machines: DNA Chemistry and Its Uses, Science, 230:281, (1985)	IAFP4121-25		
248	Chatterjee et al. Inducible Alkylation of DNA Using an Oligonucleotide-Quinone Conjugate, J. Am. Chem. Soc., 112:6397-6399, (1990)	IAFP658143-45	402, 403, 802	R, NH, HE
249	Chetverin A, Kramer D. Oligonucleotide Arrays: New Concepts and Possibilities. Bio/technology 1994 12:1093-1099	IAFP620470-77	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
250	Cho et al. An unnatural biopolymer. Science 1993;261:303-305	IAFP653964-66	402, 403, 802	R, NH, HE
251	Cimino et al. Psoralens as photoactive probes of nucleic acid structure and function; organic chemistry, photochemistry, and biochemistry, Ann. Rev. Biochem. 54:1151-1193, (1985)	IAFP658146-67	402, 403, 802	R, NH, HE
252	Conner et al. Detection of sickle cell Bs-globin allele by hybridization with synthetic oligonucleotides. Proc. Natl. Acad. Sci. 1983;80:278-82	IAFP653967-71	402, 403, 802	R, NH, HE
253	Connor JA. Digital Imaging of free calcium changes and of spatial gradients in growing processes in single, mammalian central nervous system cells. Proc. Natl. Acad. Sci. UA 1986;83:6179-6183	IAFP653989-93	402, 403, 802	R, NH, HE
254	Coulson et al. Toward a physical map of the genome of the nematode Caenorhabditis elegans. Proc. Natl. Acad. Sci. 1986;83:7821-85	IAFP620483-87	402, 403, 802	R, NH, HE
255	Cramer F, Koster H. Synthesis of Oligo-nucleotides on a Polymer Support, Angew. Chem., 80,488 (1968)		NP, 402, 403, 802	R, NH, HE, AV
256	Crkvenjakov R, Drmanac R. An Integral Approach For Complex Genome Studies. Research Proposal submitted by Biological and Medical Research Division of Argonne Nat'l Lab. To The Office of Health And Environmental Research and The Dept. of Energy in October 1990	IAFP598768-822	402, 403, 802	R, NH, HE
257	Crkvenjakov R, Drmanac R. Sequencing of Megabase Plus DNA by Hybridization: Method Development. Final Technical Progress Report October 1990	IAFP595888-595905; 572351-68	402, 403, 802, 901, MD	R, NH, HE, SD, A
258	Crkvenjakov R. Talk Presented at DOE/NIH Human Genome Sequencing Conference, Handwritten notes and transcription. (Sante Fe, NM) October 29, 1990	IAFP598136-41	402, 403, 802, 901	R, NH, HE, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
259	Dahma et al. An Improved Procedure for Derivatization of Controlled-Pore Glass Beads for Solid-Phase Oligonucleotide Synthesis. Nucleic Acid Research 1990;18:3813-3821	IAFP653972-80	402, 403, 802	R, NH, HE
260	DOE/NIH Human Genome Contractors/Grantee Workshop, November 3-4, (Santa Fe, NM) Abstracts 1989	IAFP597958-8013	402, 403, 802, MD, 901	R, HE, NH, SD, A
261	DOE/NIH Human Genome Contractors/Grantee Workshop (Santa Fe, NM) Speaker Abstracts Nov. 3-4, 1989	IAFP597926-57	402, 403, 802, MD, 901	R, HE, NH, SD, A
262	Donis-Keller et al. A Genetic Linkage Map of the Human Genome. Cell 1987;51:319-337	IAFP653994-4014	402, 403, 802	R, NH, HE
263	Dower WJ. et al. The search for molecular diversity (II): recombinant and synthetic randomized peptide libraries. Annual Reports in Medicinal Chemistry 1991;26:271-280	IAFP654015-24	402, 403	R
264	Drmanac R, Crkvenjakov R. Prospects for a Miniaturized, Simplified and Frugal Human Genome Project: The 'Sequencing Chip' Concept. Belgrade, Yugoslavia 1989	IAFP594983-93; IAFP598743-52	402, 403, 802, 901, MD	R, NH, HE, SD, A
265	Drmanac et al. An Algorithm for the DNA Sequence Generation from k-Tuple Word Contents of the Minimal Number of Random Fragments. J. Biomol. Struct. Dyn. 1991; 8:1085-1102	IAFP 595943-60	402, 403, 802	R, NH, HE
266	Drmanac et al. Laboratory Methods, Reliable Hybridization of Oligonucleotides as Short as Six Nucleotides. DNA and Cell Biology 1990;9	IAFP598658-65	402, 403, 802	R, NH, HE
267	Drmanac et al. Partial sequencing by oligo-hybridization concept and applications in genome analysis. 1st International Conference Electrophoresis, Supercomputing and the Human Genome 1990:60-74	IAFP654025-41	402, 403, 802, 901	R, NH, HE, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
268	Drmanac et al. SBH and the Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes," In Lim, H. and Fickett, J. W., Cantor, C.R. and Robbins, R.J., editors, The 2nd International Conference on Bioinformatics, Supercomputing and Complex Genome Analysis, Singapore, World Scientific 1992:121-134	IAFP622294-307	402, 403, 802, 901	R, NH, HE, A
269	Drmanac et al. Sequencing by Oligonucleotide Hybridization: A Promising Framework in Decoding of the Genome Program? 1989	IAFP4410-23	402, 403, 802, 901	R, NH, HE, A
270	Drmanac et al. Sequencing by Oligonucleotide Hybridization: A Promising Framework in Decoding of the Genome Program? 1st Int. Conf. Electrophor., Supercomp., Hum. Genome 1990:47-59	IAFP598644-657	402, 403, 802, 901	R, NH, HE, A
271	Drmanac et al. Sequencing of Megabase Plus DNA by Hybridization: Theory of the Method. Genomics 1989;4:114-128	IAFP594928-42	402, 403, 802	R, NH, HE
272	Drmanac et al. Sequencing of Megabase Plus DNA by Hybridization: Theory of the Method. abstract of presentation given at Cold Spring Harbor Symposium on Genome Mapping and Sequencing, 4/27/88 - 5/1/88	IAFP640330-524	402, 403, 802, 901	R, NH, HE, A
273	Drmanac et al. Towards Genome DNA Sequencing Chip Based on Oligonucleotide Hybridization, Modelling and Computer Methods In Molecular Biology and Genetics. Abstracts of the Int'l Conference, Novosibirsk, U.S.S.R. 1990	IAFP598068-70	402, 403, 802, 901	R, NH, HE, A
274	Drmanac et al. Reliable hybridization of oligonucleotides as short as 6 nucleotides. DNA and Cell Biology 1990;9:527-534	IAFP598658-65	402, 403, 802	R, NH, HE
275	Drmanac R. Miniaturization of Sequencing by Hybridization. The Sequencing Chip Concept Poster	IAFP598099-117	402, 403, 802, 901	R, NH, HE, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Presentation			
276	Drmanac R. Letter and attachments to Norviel re Genome Sequencing Machine, Format 3 Dec. 22, 1994	AVI_149699-705	402, 403, 802, NP, ID	R, NH, HE, AV (AVI_149699-705)
277	Drmanac R, Crkvenjakov R. Prospects for a Miniaturized, Simplified and Frugal Human Genome Project. Genetic Engineering Center, Belgrade, Yugoslavia, March 31, 1989	DOE520-46	402, 403, 802, 901	R, NH, HE, A
278	Drmanac R, Crkvenjakov R. Prospects for a Miniaturized, Simplified and Frugal Human Genome Project. Scientia Yugoslavica 1990;16:97-107.	IAFP598620-30	402, 403, 802	R, NH, HE
279	Duester et al. Molecular Cloning and Characterization of a cDNA for the B Subunit of Human Alcohol Dehydrogenase. PNAS 1984; 81:4055.	IAFP659667-71	402, 403, 802	R, NH, HE
280	Ekins R et al. Development of Microspot Multi-analyte ratiometric immunoassay using dual fluorescent-labeled antibodies. Analytica Chimica Acta 1989;227:73-96	IAFP4424-45	402, 403, 802	R, NH, HE
281	Ekins R, Chu F. Microarrays: their origins and applications. Tibtech 1999;17:217-218	IAFP659357-58	402, 403, 802	R, NH, HE
282	Elder J. Image Processing in Nucleic Acid Sequence Analysis. A thesis submitted for the degree of Doctor of Philosophy, Department of Biochemistry and Trinity College, University of Oxford 1993	IAFP632785-950	402, 403, 802, 901	R, NH, HE, A
283	Emlen W et al. A new ELIA for the detection of double-stranded DNA antibodies. J Immunol Methods 1990;132:91-101	IAFP654042-52	402, 403, 802	R, NH, HE
284	Estivill X, Williamson R. A rapid method to identify cosmids containing rare restriction sites. Nucleic Acids Research 1987;15:1415-1425	IAFP654207-17	402, 403, 802	R, NH, HE
285	Flanders et al. A New Interferometrix Alignment	IAFP658755-57	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Technique. App. Phys. Lett. 1977;31:426-428			
286	Fodor et al. DNA sequencing by hybridization. Robert A. Welch Foundation 37th Conference on Chemical Research 40 years of the DNA Double Helix 1993	IAFP6636-44	402, 403	R
287	Fodor et al. Light-directed, spatially addressable parallel chemical synthesis. Science 1991;251:767-773	IAFP5246-52		
288	Fodor et al. Multiplexed biochemical assays with biological chips. Nature 1993;364:555-556	IAFP5244-45	402, 403	R
289	Gait MJ. Oligonucleotide Synthesis: A Practical Approach. IRL Press (London) 1984.	IAFP659618-66		
290	Gallop et al. Applications of combinatorial technologies to drug discovery. 1. Background and peptide combinatorial libraries. Journal of Medicinal Chemistry 1994;37:1233-1251	IAFP654288-304		
291	Genome Mapping and Sequencing, May 2-May 6 1990, Cold Spring Harbor Laboratory Abstracts	IAFP598193-326	402, 403, 802, MD	R, NH, HE, SD
292	Gergen et al. Filter replicas and permanent collections of recombinant DNA plasmids. Nucleic Acids Res 1979;7:2115-2136	IAFP654237-58	402, 403, 802	R, NH, HE
293	Geysen et al. Strategies for epitope analysis using peptide synthesis. J Immun Meth 1987;102:259-274	IAFP654259-74	402, 403, 802	R, NH, HE
294	Gilham PT. Immobilized polynucleotides and nucleic acids. Adv Exp Med Biol 1974;42:173-85	IAFP654275-87	402, 403, 802	R, NH, HE
295	Glazer et al. A stable double-stranded DNA-ethidium homodimer complex: Application to picogram fluorescence detection of DNA in agarose gels. Proc. Natl. Acad. Sci. 1990;87:3851-3855	IAFP655027-31	402, 403, 802	R, NH, HE
296	Gordon et al. Applications of combinatorial technologies to drug discovery. 2. Combinatorial	IAFP654288-304		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	organic synthesis, library screening strategies, and future directions. Journal of Medicinal Chemistry 1994;37:1385-1401			
297	Gundersen et al. Magnetic bead antigen capture enzyme-linked immunoassay in microtitre trays for rapid detection of schistosomal circulating anodic antigen. J Immunol Methods 1992;148:1-8	IAFP654305-12	402, 403, 802	R, NH, HE
298	Haralambidis et al. Preparation of base-modified nucleosides suitable for non-radioactive label attachment and their incorporation into synthetic oligodeoxyribonucleotides. Nucleic Acids Res 1987;15:4857-4876	IAFP654313-32	402, 403, 802	R, NH, HE
299	Heidmann W, Koster H. Polymer Support Oligonucleotide Synthesis, 11: Use of a Novel Hydrophilic Bead Polymer as Carrier, Makromolekulare Chemie, 181, 2495 (1980)		NP, 402, 403, 802	R, NH, HE, AV
300	Hiraoka et al. The NDA3 Gene of Fission Yeast Encodes B-Tubulin: A Cold-Sensitive nda3 Mutation Reversibly Blocks Spindle Formation and Chromosome Movement in Mitosis. Cell 1984;39:349-358	IAFP654774-83	402, 403, 802	R, NH, HE
301	Hiraoka et al. The use of charge-coupled device for quantitative optical microscopy of biological structures. Science 1987;238:36-41	IAFP653981-88	402, 403, 802	R, NH, HE
302	Hiraoka et al. The use of a charge-coupled device for quantitative optical microscopy of biological structures. Abstract from PubMed 1987	IAFP654348	402, 403, 802	R, NH, HE
303	Hultman et al. Direct solid phase sequencing of genomic and plasmid DNA using magnetic beads as solid support. Nucleic Acids Research 1989;17:4937-4946	IAFP654349-58	402, 403, 802	R, NH, HE
304	Inouye S, Hondo R. Microplate hybridization of amplified viral DNA segment. J Clin Microbiol	IAFP654359-62	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	1990;28:1469-1472			
305	Jablonski E, DeLuca M. Immobilization of bacterial luciferase and FMN reductase on glass rods. Proc. Natl. Acad. Sci. 1976;73:3848-3851	IAFP654363-66	402, 403, 802	R, NH, HE
306	Jacobs et al. Combinatorial chemistry--applications of light-directed chemical synthesis. Ophthalmic Genetics 1994;12:19-26	IAFP6645-52	402, 403, 802	R, NH, HE
307	Jeffreys et al. Amplification of human minisatellites by the polymerase chain reaction: towards DNA fingerprinting of single cells. Nucleic Acids Research 1988;16:10953-10971	IAFP654367-85	402, 403, 802	R, NH, HE
308	Kanehisa M. Use of statistical criteria for screening potential homologies in nucleic acid sequences, Nucleic Acids Research, 12:203-213, (1984)	IAFP658761-71	402, 403, 802	R, NH, HE
309	Karlin et al. Efficient algorithms for molecular sequence analysis. Proc. Natl. Acad. Sci. 1988;85:841-845	IAFP654597-601	402, 403, 802	R, NH, HE
310	Khorana et al. A New Approach to the Synthesis of Polynucleotides. Chemistry and Industry 1956:1523	IAFP654602	402, 403, 802	R, NH, HE
311	Khrapko et al. An oligonucleotide hybridization approach to DNA sequencing. FEBS Lett 1989;256:118-122	IAFP654603-07	402, 403, 802	R, NH, HE
312	Khrapko et al. Hybridization of DNA with Oligonucleotides Immobilized in Gel: Convenient Method for Recording Individual Base Changes. Molekulyarnaya Biologiya 1991;25:718-730	IAFP657971-99	402, 403, 802	R, NH, HE
313	Kohara et al. The physical map of the whole E. coli Chromosome: Application of a new strategy for rapid analysis and sorting of a large genomic library. Cell 1987;50:495-508	IAFP654608-21	402, 403, 802	R, NH, HE
314	Koster et al. Synthesis of Oligodeoxynucleotides on Controlled Pore Glass (CPG) Using Phosphate and a	IAFP654622-31	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	New Phosphite Triester Approach. Tetrahedron 1984;40:103-112			
315	Köster H, Geussenhainer S. A New Carrier for Polymer Support Oligomer Synthesis, Angew. Chem., 84, 712 (1972)		NP, 402, 403, 802	R, NH, HE, AV
316	Köster H. Polymer Support Oligonucleotide Synthesis: Use of Inorganic Carriers, Tetrahedron Letters, 1972, 1527		NP, 402, 403, 802	R, NH, HE, AV
317	Köster H. Synthesis of a Structural Gene Coding for the Peptide Hormone Angiotensin II, Part 3: Synthesis of the Fragments d(T-T-T-T-A-A), d(A-T-A-T-C-A-TC-C-C) and d(T-T-A-A-A-A-G-G-G-A-T), Liebigs Ann. Chem., 1978, 894		NP, 402, 403, 802	R, NH, HE, AV
318	Köster et al. Polymer Support Oligonucleotide Synthesis - XV. Synthesis of Oligodeoxynucleotides on Controlled Pore Glass (CPG) Using Phosphate and a New Phosphite Triester Approach. Tetrahedron (1984), Vol. 40, No. 1, 103-112.		NP, 402, 403, 802	R, NH, HE, AV
319	Kremsky et al. Immobilization of DNA via oligonucleotides containing an aldehyde or carboxylic acid group at the 5' terminus Nucleic Acids Res 1987;15:2891-2909	IAFP654632-50	402, 403, 802	R, NH, HE
320	Kwoh et al. Transcription-based amplification system and detection of amplified human immunodeficiency virus type 1 with a bead-based sandwich hybridization format. PNAS 1989;86:1173-1177	IAFP654651-55	402, 403, 802	R, NH, HE
321	Landegren et al. A ligase-mediated gene detection technique. Science 1988;241:1077	IAFP654680-82	402, 403, 802	R, NH, HE
322	Larin et al. Fluorescence in situ hybridisation of multiple probes on a single microscope slide. Nucleic Acid Research 1994;22:3689-3692	IAFP654656-59	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
323	Lee et al. Interaction of psoralen-derivatized oligodeoxyribonucleoside methylphosphonates with synthetic DNA containing a promoter for T7 RNA polymerase. Nucleic Acids Research 1988;16:10681-10697	IAFP654660-76	402, 403, 802	R, NH, HE
324	Lieberman et al. A Light Source Smaller Than the Optical Wavelength. Science 1990;247:59-61	IAFP654677-79	402, 403, 802	R, NH, HE
325	Lipman D, Pearson W. Rapid and sensitive protein similarity searches. Science 1985;227:1435	IAFP654863-69	402, 403, 802	R, NH, HE
326	Lipshutz et al. DNA sequence confidence estimation. Genomics 1994;19:417-424	IAFP654688-95	402, 403	R
327	Lipshutz R. Likelihood DNA sequencing by hybridization. Journal of Biomolecular Structure & Dynamics 1993;11:637-653	IAFP654696-712	402, 403	R
328	Lipshutz R. and Stephen Fodor. Advanced DNA sequencing technologies. Current Biology 1994;4:376-380	IAFP654683-87	402, 403	R
329	Lund et al. Assessment of Methods for Covalent Binding of Nucleic Acids to Magnetic Beads, Dynabeads, and the characteristics of bound nucleic acids in hybridization reactions. Nucleic Acid Research 1988;16	IAFP654713-32	402, 403, 802	R, NH, HE
330	Lundwell et al. Isolation and Sequence Analysis of a cDNA Clone Encoding the Fifth Complement Component. The Journal of Biological Chemistry 1985;260:2108.	IAFP659613-17	402, 403, 802	R, NH, HE
331	Lysov YP, Florentev VL, Khorlin AA, Khrapko KR, Shik VV, Mirzabekov AD. A new method for determining the DNA nucleotide sequence by hybridization with oligonucleotides. Dokl Biochem 1989; 436-8 (Russian original Dolk Biochem 1988;303: 355-452)	IAFP654733-35	402, 403, 802	R, NH, HE

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332	Maiolini R et al. Study of an enzyme immunoassay kit for carcinoembryonic antigen. Clin Chem 1980;26:1718-1722	IAFP654736-740	402, 403, 802	R, NH, HE
333	Mapping Our Genes - Genome Projects: How Big? How Fast? April 1988		NP, 402, 403, 802, ID	R, NH, HE , AV
334	Maskos U. A Novel Method of Nucleic Acid Sequence Analysis. Thesis submitted for the degree of Doctor of Philosophy at the University of Oxford 1991	IAFP617532-87	402, 403, 802, 901	R, NH, HE, A
335	Mathies et al. High-sensitivity single-molecule fluorescence detection. SPIE 1990;1205:52-59	IAFP654333-40	402, 403, 802	R, NH, HE
336	Mathies et al. Optimization of High-Sensitivity Fluorescence Detection. Anal. Chem. 1990;62:1786-1791	IAFP654741-46	402, 403, 802	R, NH, HE
337	Maxam A, Gilbert W. A New method for sequencing DNA. Proc. Natl. Acad. Sci. 1977;74:550-564	IAFP654747-51	402, 403, 802	R, NH, HE
338	McCray et al. Properties and Uses of Photoreactive Caged Compounds, Ann. Rev. Biophys. And Biophys. Chem.,18:239-270, (1989)	IAFP658775-91	402, 403, 802	R, NH, HE
339	Merrifield. Solid Phase Synthesis, Science 232:341-347, (1986)	IAFP658792-98	402, 403, 802	R, NH, HE
340	Merrifield RB. Solid Phase Peptide Synthesis, I. The Synthesis of a Tetrapeptide. Method, J. Am. Chem. Soc. 1963;85:2149-2154	IAFP654752-58	402, 403, 802	R, NH, HE
341	Michael et al. Randomly ordered addressable high-density optical sensor arrays. Anal Chem. 1998;70:1242-1248	IAFP654759-65	402, 403, 802	R, NH, HE
342	Michiels et al. Molecular approaches to genome analysis: a strategy for the construction of ordered overlapping clone libraries. Cabios 1987;3,:203-210	IAFP654766-73	402, 403, 802	R, NH, HE

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343	Nguyen et al. Detection of Single Molecules of Phycoerythrin in Hydrodynamically Focused Flows by Laser-Induced Fluorescence. Anal Chem 1987;59:2158-2161	IAFP654784-87	402, 403, 802	R, NH, HE
344	Olson et al. Random-clone strategy for genomic restriction mapping in yeast. Proc. Natl. Acad. Sci. 1986;83:7826-7830	IAFP654788-92	402, 403, 802	R, NH, HE
345	Parsons. Yearly Review: Psoralen Photochemistry, Photochem and Photobiol. 32:813-821, (1980)	IAFP658816-37	402, 403, 802	R, NH, HE
346	Patchornik et al. Photosensitive Protecting Groups. J. Am. Chem. Soc. 1970;92:6333-6335	IAFP654793-96		
347	Pease et al. Light-generated oligonucleotide arrays for rapid DNA sequence analysis. Proceedings of the National Academy of Sciences of the United States of America 1994;91:5022-5026	IAFP4709-13	402, 403	R
348	Pevzner AV. 1-Tuple DNA sequencing: computer analysis. J Biomol Struct Dynamics 1989;7:63-73	IAFP654797-807	402, 403, 802	R, NH, HE
349	Phimister B. Going global. Nature Genet 1999;21	IAFP654808	402, 403, 802	R, NH, HE
350	Pirrung M, Bradley JC. Comparison of Method for Photochemical Phosphoramidite-Based DNA Synthesis. J. Org. Chem. 1995;60:6270-6267	IAFP5318-5324	402, 403, 802	R, NH, HE
351	Ploem JS. New instrumentation for sensitive image analysis of fluorescence in cells and tissues. In: Applications of fluorescence in the biomedical sciences, Eds Taylor DL, Wagoner AS, Lanni F, Murphy RF, Birge RR. New York: AR Liss, 1986:289-300	IAFP654809-20	402, 403, 802	R, NH, HE
352	Pon et al. Derivatization of Controlled-Pore Glass Beads for Solid-Phase Oligonucleotide Synthesis. Bio Techniques 1988;6:768-765	IAFP654821-26	402, 403, 802	R, NH, HE
353	Poustka et al. Molecular Approaches to Mammalian Genetics. Cold Spring Harbor Symposia on	IAFP654827-35	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Quantitative Biology 1986			
354	Prober et al. A system for rapid DNA sequencing with fluorescent chain-terminating dideoxynucleotides. Science 1987;238:131-139	IAFP654836-41	402, 403, 802	R, NH, HE
355	Quesada et al. High-Sensitivity DNA Detection with a Laser-Excited Confocal Fluorescence Gel Scanner. Biotechniques 1991;10:616-625	IAFP654854-62	402, 403, 802	R, NH, HE
356	Raoult D, Dasch G. The line blot: an immunoassay for monoclonal and other antibodies. Journal of Immunological Methods 1989;125:57-65	IAFP655042-50	402, 403, 802	R, NH, HE
357	Rocks BF, Riley C. Automatic analysers in clinical biochemistry. Clin. Phys. Physiol. Meas. 1986;7:1-29	IAFP654870-98	402, 403, 802	R, NH, HE
358	Rost FWD. Quantitative fluorescence microscopy. Cambridge:Cambridge University Press, chapters 15 and 16, 1991:162-178	IAFP654899-917	402, 403, 802	R, NH, HE
359	Rozsnyai, L. et al. Photolithographic immobilization of biopolymers on solid supports. Angewandte Chemie [International Edition, English] Vol. 31, No. 6, 759-61 (1992)	IAFP654221-23	402, 403	R
360	Rye et al. High-sensitivity two-color detection of double-stranded DNA with a confocal fluorescence gel scanner using ethidium homodimer and thiazole orange. Nucleic Acids Research 1990;19:327-333	IAFP654341-47	402, 403, 802	R, NH, HE
361	Saiki et al. Analysis of enzymatically amplified B-globin and HLA-DQ_ DNA with allele-specific oligonucleotide probes. Nature 1986;324:163-166	IAFP654940-43	402, 403, 802	R, NH, HE
362	Saiki et al. Primer-Directed Enzymatic Amplification of DNA with a Thermostable DNA Polymerase. Science 1988;239:487-491	IAFP654935-39	402, 403, 802	R, NH, HE
363	Sanger et al. DNA sequencing with chain-terminating inhibitors. Proc. Natl. Acad. Sci.	IAFP654944-48	402, 403, 802	R, NH, HE

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	1977;74:5463-5467			
364	Scillian et al. Early Detection of Antibodies Against rDNA-Produced HIV Proteins with a Flow Cytometric Assay. Journal of Blood 1998;73:2041-2048	IAFP654949-56	402, 403, 802	R, NH, HE
365	Shack et al. Design for a fast fluorescent laser scanning microscope. Anal Quant Cytol Histol 1987;9:509-520	IAFP654957-68	402, 403, 802	R, NH, HE
366	Shitara et al. Advantage of cocktail-use of two anti-tumor monoclonal antibodies, KM-93 and KM-231, in serum diagnosis of cancer. Anticancer Res. 1989;9:999-1004	IAFP654969-74	402, 403, 802	R, NH, HE
367	Skolnick MH, Wallace RB. Simultaneous Analysis of Multiple Polymorphic Loci Using Amplified Sequence Polymorphisms (ASPs). Genomics 1988;2:273-279	IAFP654975-81	402, 403, 802	R, NH, HE
368	Smith et al. Fluorescence detection in automated DNA sequence analysis. Nature 1986;321	IAFP655003-08	402, 403, 802	R, NH, HE
369	Smith et al. The synthesis of oligonucleotides containing an aliphatic amino group at the 5' terminus: synthesis of fluorescent DNA primers for use in DNA sequence analysis. Nucleic Acids Res 1985;13:2399-2412	IAFP654989-5002	402, 403, 802	R, NH, HE
370	Smith L, Hood L. Mapping and Sequencing the Human Genome: How to Proceed. Bio/Technology 1987;5:674-679	IAFP654982-88	402, 403, 802	R, NH, HE
371	Song et al. Review Article: Photochemistry and Photobiology of Psoralens, Photochem. Photobiol. 29:1177-1197, (1979)	IAFP658816-37	402, 403, 802	R, NH, HE
372	Southern EM. Detection of specific sequences among DNA fragments separated by gel electrophoresis. J Mol Biol. 1975;98:503-517	IAFP655009-026	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
373	Stodolsky M. Sequencing by Hybridization (SBH). The Radomir Crkvenjakov Laboratory 1989	IAFP598028-29	402, 403, 802, 602, 901	R, NH, HE, A, PK
374	Stodolsky M. Sequencing by Hybridization (SBH). R&D at the Center for Genetic Engineering in Belgrade, Yugoslavia: The Radomir Crkvenjakov Laboratory, Trip Report by Marvin Stodolsky 1989	IAFP598028-29	402, 403, 802, 602, 901	R, NH, HE, A, PL
375	Streefkerk et al. "Principles of a Preaction for Simultaneous Detection of Various Antibodies Using Colored Antigen-Coupled Agarose Beads." 1976;24:811-814	IAFP655032-35	402, 403, 802	R, NH, HE
376	Streefkerk et al. Antigen-coupled beads adherent to slides: a simplified method for immunological studies. J Immunol Methods 1975;8:251-256	IAFP655036-41	402, 403, 802	R, NH, HE
377	Thein et al. The use of synthetic oligonucleotides as specific hybridization probes in the diagnosis of genetic disorders. In Davies, K. (Ed.) Human Genetic Diseases, A Practical Approach. IRL Press, Oxford, UK, 1986:33-50	IAFP655051-68	402, 403, 802	R, NH, HE
378	Toda et al. Sequential alterations in the nuclear chromatin region during mitosis of the fission yeast Schizosaccharomyces pombe: video fluorescence microscopy of synchronously growing wild-type and cold-sensitive cdc mutants by using a DNA-binding fluorescent probe. J Cell Sci. 1981;52:271-287	IAFP655069-86	402, 403, 802	R, NH, HE
379	Umesono et al. Visualization of Chromosomes in Mitotically Arrested Cells of the Fission Yeast Schizosaccharomyces pombe. Current Genetics 1983;7:123	IAFP656297-302	402, 403, 802	R, NH, HE
380	Urdea et al. A comparison of non-radioisotopic hybridization assay methods using fluorescent, chemiluminescent and enzyme labeled synthetic oligodeoxyribonucleotide probes. Nucleic Acids Research 1988;16:4937-4956	IAFP655087-106	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
381	Vignali DA. Multiplexed Particle-based flow cytometric assays. Journal of Immunological Methods 2000;243:243-255	IAFP656284-96	402, 403, 802	R, NH, HE
382	Wahlberg et al. Rapid detection and sequencing of specific in vitro amplified DNA sequences using solid phase methods. Molecular and Cellular Probes 1990;4:285-297	IAFP656303-15	402, 403, 802	R, NH, HE
383	Wallace et al. Hybridization of synthetic oligodeoxyribonucleotides to FcDNA: the effect of single base pair mismatch. Nucleic Acids Research 1979;6:3543-3557	IAFP656316-30	402, 403, 802	R, NH, HE
384	Wallace et al. The use of Synthetic Olionucleotides as Hybridization Probes - II. Hybridization of Olionucleotides of mixed sequence to rabbit B-globin DNA. Nucleic Acids Research 1981;81:4055.	IAFP659672-87	402, 403, 802	R, NH, HE
385	Wang S, Grayston JT. Immunologic Relationship between Genital Tric, Lympho-Granuloma Venereum, and Related Organisms in a New Microtiter Indirect Immunofluorescence Test. Am J Ophthalmology 1970;70:367-374	IAFP656331-38	402, 403, 802	R, NH, HE
386	White et al. An Evaluation of Confocal Versus Conventional Imaging of Biological Structures by Fluorescence Light Microscopy. The Journal of Cell Biology 1987;105:41-48	IAFP656364-71	402, 403, 802	R, NH, HE
387	Wolf et al. Rapid hybridization kinetics of DNA attached to submicron latex particles. Nucleic Acids Res 1987;15:2911-2926	IAFP657442-57	402, 403, 802	R, NH, HE
388	Wolf Trap Genome Sequencing Conference October 24-26, 1989	IAFP597859-82	402, 403, 802, MD, ID, 901, 602	R, NH, HE, A, SD, PK
389	European Patent (EP) Opposition No. 0 619 321 with Affymetrix and Protogene exhibits	IAFP3224-8029	402, 403, 802, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
390	BioChip Array Technologies	IAFP643753-71	402, 403, 802	R, NH, HE
391	Diagram of Format 3 Combinatorial Chip	IAFP643752	402, 403, 802, ID, 901	R, NH, HE
392	U.S. Patent No. 4,039,288	IAFP622308-16	402, 403	R
393	U.S. Patent No. 4,159,875	IAFP622317-21	402, 403	R
394	U.S. Patent No. 4,430,299	IAFP655165-81	402, 403	R
395	U.S. Patent No. 4,595,562	IAFP622339-55	402, 403	R
396	U.S. Patent No. 4,608,231	IAFP622356-62	402, 403	R
397	U.S. Patent No. 4,675,299	IAFP622363-72	402, 403	R
398	U.S. Patent No. 4,676,951	IAFP655222-46	402, 403	R
399	U.S. Patent No. 4,678,894	IAFP622398-416	402, 403	R
400	U.S. Patent No. 4,719,087	IAFP622417-39	402, 403	R
401	U.S. Patent No. 4,720,786	IAFP619446-58	402, 403	R
402	U.S. Patent No. 4,741,043	IAFP619459-76	402, 403	R
403	U.S. Patent No. 4,777,597	IAFP619477-92	402, 403	R
404	U.S. Patent No. 4,802,101	IAFP619493-500	402, 403	R
405	U.S. Patent No. 4,811,218	IAFP619501-22	402, 403	R
406	U.S. Patent No. 4,837,733	IAFP619523-51	402, 403	R
407	U.S. Patent No. 4,885,696	IAFP619552-64	402, 403	R
408	U.S. Patent No. 4,888,695	IAFP619565-77	402, 403	R
409	U.S. Patent No. 4,894,786	IAFP619578-89	402, 403	R
410	U.S. Patent No. 4,931,223	IAFP619590-98	402, 403	R
411	U.S. Patent No. 4,939,667	IAFP619599-608	402, 403	R
412	U.S. Patent No. 4,941,092	IAFP619609-21	402, 403	R
413	U.S. Patent No. 4,952,707	IAFP619622-33	402, 403	R

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414	U.S. Patent No. 4,958,281	IAFP619634-41	402, 403	R
415	U.S. Patent No. 4,965,725	IAFP619642-57	402, 403	R
416	U.S. Patent No. 4,972,325	IAFP619658-66	402, 403	R
417	U.S. Patent No. 4,982,326	IAFP619667-86	402, 403	R
418	U.S. Patent No. 5,002,867	IAFP619687-715	402, 403	R
419	U.S. Patent No. 5,171,534	IAFP13058-70	402, 403	R
420	U.S. Patent No. 5,202,231	IAFP619729-42	402, 403	R
421	U.S. Patent No. 5,260,190	IAFP619743-56	402, 403	R
422	U.S. Patent No. 5,270,162	IAFP619757-69	402, 403	R
423	U.S. Patent No. 5,273,632 (Stockham)	IAFP619770-89	402, 403	R
424	U.S. Patent No. 5,297,288	IAFP619790-858	402, 403	R
425	U.S. Patent No. 5,306,618	IAFP619859-99	402, 403	R
426	U.S. Patent No. 5,332,666	IAFP619900-39	402, 403	R
427	U.S. Patent No. 5,445,934	IAFP619956-93	402, 403	R
428	U.S. Patent No. 5,470,710 (Weiss)	IAFP61994-20012	402, 403	R
429	U.S. Patent No. 5,492,806	IAFP620013-22	402, 403	R
430	U.S. Patent No. 5,525,464	IAFP620023-57	402, 403	R
431	U.S. Patent No. 5,527,681	IAFP 620058-92	402, 403	R
432	U.S. Patent No. 5,556,749	IAFP 620093-277	402, 403	R
433	U.S. Patent No. 5,665,549	IAFP 620278-319	402, 403	R
434	U.S. Patent No. 5,695,940	IAFP 596417-53	402, 403	R
435	U.S. Patent No. 5,727,098	IAFP620368-88	402, 403	R
436	U.S. Patent No. 5,972,619	IAFP596454-86	402, 403	R
437	U.S. Patent No. 6,316,191	IAFP596634-66	402, 403	R

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438	U.S. Patent No. 6,607,887	IAFP 1591-648	402, 403	R
439	U.S. Patent No. 6,645,243	IAFP 1923-73		
440	WO 89/10977	IAFP620091-1121	402, 403, 802	R, NH, HE
441	WO 90/01564	IAFP621122-201	402, 403, 802	R, NH, HE
442	WO 90/02173	IAFP621202-76	402, 403, 802	R, NH, HE
443	WO 90/02204	IAFP621277-352	402, 403, 802	R, NH, HE
444	WO 90/08838	IAFP621353-407	402, 403, 802	R, NH, HE
445	WO 92/10588	IAFP621455-572	402, 403	R, NH, HE
446	WO 92/20824	IAFP621573-682	402, 403, 802	R, NH, HE
447	WO 93/11262	IAFP621408-54	402, 403, 802	R, NH, HE
448	WO 93/18186	IAFP621683-774	402, 403, 802	R, NH, HE
449	WO 94/11837	IAFP621775-998	402, 403, 802	R, NH, HE
450	WO 95/11995	IAFP621999-2232	402, 403	R
451	WO 95/35505	IAFP622233-85	402, 403, 802	R, NH, HE
452	EP 0549388	IAFP620587-613	402, 403	R
453	EP 0631635	IAFP320614-61	402, 403	R
454	GB 2228998	IAFP620697-745	402, 403, 802	R, NH, HE
455	European Patent App. 0 514 927 A1	IAFP 620526-86	402, 403, 802	R, NH, HE
456	Prosecution History of App. Number 08/528,173 ('044 Patent)	IAFP14134-821	402, 403, 802, ID, MD	R, NH, HE, SD
457	Prosecution History of App. Number 09/158,765 ('180 Patent)	IAFP18553-822	402, 403, 802, ID, MD	R, NH, HE, SD
458	Prosecution History of App. Number 09/302,052 ('850 Patent)	IAFP18823-19097	402, 403, 802, ID, MD	R, NH, HE, SD
459	Prosecution History of App. Number 09/796,701	IAFP1649-922	402, 403, 802, ID, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	('887 Patent)			
460	Prosecution History of App. Number 09/907,196 ('365 Patent)	IAFP1301-590		
461	Amit et al., "Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis", 1974, J. Org. Chem 39:192-196	IAFP3907-11		
462	Andrei D. Mirzabekov, DNA sequencing by hybridization -- a megasequencing method and a diagnostic tool?, 1994	IAFP643926-30	402, 403, 802	R, NH, HE
463	Bains and Smith, "A Novel Method for Nucleic Acid Sequence Determination", J. Theor. Biol. 135:303-307. 1998	IAFP620455-60	402, 403, 802	R, NH, HE
464	Barinaga, "Will 'DNA Chip' Speed Genome Initiative?", Science 253:1489. 1991	IAFP620461	402, 403, 802	R, NH, HE
465	Carrano et al., "A High-Resolution, Fluorescence-Based, Semiautomated Method for DNA Fingerprinting" Genomics 4:129-136. 1989	IAFP620462-69	402, 403, 802	R, NH, HE
466	Charles R. Cantor, Ph.D., Daniel E. Koshland Jr., Ph.D., Co-chairmen, Human Genome I, An International Conference on the status and future of research on the Human Genome, 1989	UTRF 293-297	402, 403, 802, 602, 901, MD, ID	R, NH, HE, A, SD, PK
467	Cantor, et al., Report on the Sequencing by Hybridization Workshop, GENOMICS 13(4): 1378-1383 (August 1992) ("Moscow Report")	IAFP 644443-48	402, 403, 802	R, NH, HE
468	Chetverin et al., "Oligonucleotide Arrays: New Concepts and Possibilities" Bio/Tech. 12:1093-1099. 1994	IAFP620470-77	402, 403, 802	R, NH, HE
469	Church et al., "Genomic Sequencing", Proc. Natl. Acad. Sci. UA 81:1991-1995. 1984	IAFP620478-82	402, 403, 802	R, NH, HE
470	Computer Assisted Multiplex Sequencing. Progress Report, August 1, 1990-July 31, 1991, Harvard	IAFP657957-65	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Medical School, Boston, MA (Aug 1991)			
471	Coulson et al., "Toward a physical map of the genome of the nematode <i>Caenorhabditis elegans</i> " Proc. Natl. Acad. Sci. UA 83:7821-7825. 1986	IAFP620483-87	402, 403, 802	R, NH, HE
472	Craig et al., "Ordering of cosmid clones covering the Herpes simplex virus type I (HSV-I) genome: a test case for fingerprinting by hybridization" Nucleic Acids Res. 18:2653-2660. 1990	IAFP620488-95	402, 403, 802	R, NH, HE
473	Dear et al., "A Sequence Assembly and Editing Program for Efficient Management of Large Projects," Nucleic Acids Research, 19(14): 3907-3911 (July 25, 1991)	IAFP657966-70	402, 403, 802	R, NH, HE
474	Department of Energy, Sequencing of DNA by Hybridization with Oligonucleotides Matrix (SHOM), 1992	DOE832-839	402, 403, 802, 901, 602	R, NH, HE, A, PK
475	Report on Foreign Travel of Richard A. Sachleben, 1991	DOE 16-23	402, 403, 802, 901, 602	R, NH, HE, A, PK
476	Dower et al., "The search for molecular diversity: Recombinant and synthetic randomized peptide libraries", Ann. Rep. Med. Chem. 28:271-280. 1991	IAFP620496-506	402, 403	R
477	Drmanac et al., "SBH and the Integration of Complementary Approaches in the Mapping" World Scientific, 1993	IAFP643939-62	402, 403, 802, 901, 602	R, NH, HE, A, PK
478	Drmanac et al. "An Algorithm for the DNA Sequence Generation from k-Tuple Word contents of the Minimal Number of Random Fragments", 1991, J. Biomol. Struct. & Dynamics 8:1085-1102	IAFP620507-25	402, 403, 802	R, NH, HE
479	Drmanac et al. "DNA Sequence Determination by Hybridization: A Strategy for Efficient Large-Scale Sequencing", 1993, Science 260:1649-1652	IAFP596101-04	402, 403, 802	R, NH, HE
480	Drmanac et al. "Sequencing of Megabase Plus DNA by Hybridization: Theory of the Method", 1989,	IAFP595888-905	402, 403, 802, 901	R, NH, HE, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Genomic 4:114-128			
481	Drmanac et al., "Reliable Hybridization of Oligonucleotides as Short as Six Nucleotides", 1990, DNA Cell Biol. 9:527-534	IAFP598658-65	402, 403, 802	R, NH, HE
482	Drmanac et al., "Sequencing by Oligonucleotide Hybridization: A Promising Framework in Decoding of the Genome Program?", The First Intl. Conf. Electrophoresis, Supercomputing, and the Human Genome, Apr. 10-13, 1990, pp. 47-59, 60-74	IAFP598644-57	402, 403, 802, 901	R, NH, HE, A
483	E. Kreindlin et al, "A Sequenator for analysis of diagnostic and sequencing microchips," Engelhardt Institute of Molecular Biology, Russian Academy of Sciences, Moscow.	IAFP598552-53	402, 403, 802	R, NH, HE
484	Ekins et al., "Development of Microspot Multi-Analyte Ratiometric Immunoassay Using Dual Fluorescent-Labelled Antibodies", 1989, Analytica Chimica Acta227:73-96	IAFP 4424-4445	402, 403, 802	R, NH, HE
485	Elder thesis	IAFP 632785-950	402, 403, 802, 901	R, NH, HE, A
486	E.M. Southern, et al., Analyzing and Comparing Nucleic Acid Sequences by Hybridization to Arrays of Oligonucleotides: Evaluation Using Experimental Models, GENOMICS 13:1008-17 (1992) ("Southern")	IAFP 5989-5998	402, 403, 802	R, NH, HE
487	Evans et al., 1989, Proc. Natl. Acad. Sci. UA 86:5030-5034	IAFP620662-0666	402, 403, 802	R, NH, HE
488	Feinberg and Vogelstein, "A Technique for Radiolabeling DNA Restriction Endonuclease Fragments to High Specific Activity", Anal. Biochem, 132:266-267 (Addendum). 1984	IAFP620667-68	402, 403, 802	R, NH, HE
489	Fodor et al., "Light-Directed, Spatially Addressable Parallel Chemical Synthesis", 1991, Science 251:767-773	IAFP5246-52		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
490	G. Church and S. Kieffer-Higgins, "Multiplex DNA Sequencing," Research Articles, 1998.	IAFP 658016-19	402, 403, 802	R, NH, HE
491	Genomic Sequence Comparisons. Annual Technical Progress Report (1998).		NP, 402, 403, 802	R, NH, HE, AV
492	Hodgson and Fisk, "Hybridization probe size control: optimized 'oligolabelling' Nucleic Acids Res. 15:6295. 1987	IAFP5985	402, 403, 802	R, NH, HE
493	Human Genome III Official Program Abstracts (Oct. 21-23, 1991)	AVI_131963-2005	402, 403, MD, 802	R, NH, HE, SD
494	Human Genome Management Information System, DOE Human Genome Program, 1991		NP, 402, 403, ID, MD	R, SD, AV
495	Illumina Technical Bulletin: Whole-Genome Expression Analysis Using the Sentrix Human-6 and HumanRef-8 Expression BeadChips	IAFP 22575-582	402, 403, 802	R, NH, HE
496	International Workshop on Sequencing Hybridization with Abstracts Oct. 29-30 1993	IAFP598513-612	402, 403, 802, 602, ID, MD	R, NH, HE, PK, SD
497	Kaiser, et al., "Specific-primer-directed DNA sequencing using automated fluorescence detection" Nucleic Acids Research, 17(15): 6087-6102 (1989)	IAFP658000-15	402, 403, 802	R, NH, HE
498	Khrapko et al., "A Method for DNA sequencing by hybridization with oligonucleotide matrix" DNA Seq. Map 1:375-388. 1991 ("Khrapko II")	IAFP 620747-60	402, 403, 802	R, NH, HE
499	K. Khrapko et al, "Hybridization of DNA with Oligonucleotides Immobilized in Gel: Convenient Method for Recording Individual Base Changes," Engelhardt Institute of Molecular Biology, Russian Academy of Sciences, Moscow. 1991 (718-730)	IAFP643912-25	402, 403, 802	R, NH, HE
500	K.R. Khrapko, A.Yu.P. Lysov, K.P. Khrapko, A.V. Belyavsky, V.L. Florentiev, A.D. Mirzabekov, Improved Chips for Sequencing by Hybridization, 1991	DOE 24-35	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
501	Khrapko et al., "An Oligonucleotide Hybridization Approach to DNA Sequencing", FEBS Lett. 256:118-122. 1989	IAFP4365-69	402, 403, 802	R, NH, HE
502				
503	Lander et al., "Genomic Mapping by Fingerprinting Random Clones: A Mathematical Analysis" Genomics 2:231-239. 1988	IAFP620761-69	402, 403, 802	R, NH, HE
504	Lipshutz et al, "DNA Sequence Confidence Estimation," Genomics, 19: 417-424 (1994).	AVI_2793-800	402, 403	R
505	Little, "Clone maps made simple", Nature 346:611-612. 1990	IAFP620770-71	402, 403, 802	R, NH, HE
506	Lysov, et al., A New Method for Determining the DNA Nucleotide Sequence by Hybridization with Oligonucleotides 303 (6): 1508-1511 (December 1988)	IAFP 654733-35	402, 403, 802	R, NH, HE
507	M. Adams, C. Fields and J. Venter, "Automated DNA Sequencing and Analysis," Academic Press, 1994.	IAFP 594973-82	402, 403, 802	R, NH, HE
508	Mirzabekov, Sequencing of DNA by Hybridization with oligonucleotides matrix (SHOM). March 1992 ("Mirzabekov Grant Application")	IAFP 643931-38	402, 403, 802, 602	R, NH, HE, PK
509	Mirzabekov, DNA sequencing by hybridization - a megasequencing method and a diagnostic tool?, TIBTECH 12:27-32 (Jan. 1994) ("Mirzabekov I")	IAFP 643926-30	402, 403, 802	R, NH, HE
510	N. Rabbee and T. Speed, "A Genotype Calling Algorithm for Affymetrix SR Arrays," Bioinformatics, 2005 (7-12)	IAFP658020-25	402, 403, 802	R, NH, HE
511	P.A. Pevzner, Yu.P. Lysov, K.P. Khrapko, A.V. Belyavsky, V.L. Florentiev, A.D. Mirzabekov, Optimal Chips for Megabase DNA Sequencing, 1991	IAFP 632403-12; DOE 48-59 (Russian Version)	402, 403, 802, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
512	Perkin Elmer Cetus, Gene Amp DNA Amplification Reagent Kit, insert, Oct. 1988		NP, 402, 403, 802	R, NH, HE, AV
513	"A Method for DNA Sequencing by Hybridization with Oligonucleotide Matrix" DNA Seq. Map 1:375-388. 1991	PHRI000405-418	402, 403, 802	R, NH, HE
514	R. Gesteland, Notes on Russia	DOE 6-12	402, 403, 802, 901	R, NH, HE, A
515	Report on the Sequencing by Hybridization Workshop, Moscow, SBH: An idea whose time has probably come, 1991	DOE 97-108	402, 403, 802, 901	R, NH, HE, A
516	S. Smith, W. Welch et al, "High Throughput DNA Sequencing Using an Automated Electrophoresis Analysis System and a Novel Sequence Assembly Program," BioTechniques, June 1993 (1014-1018).	IAFP657951-56	402, 403, 802	R, NH, HE
517	Southern et al., "Analyzing and Comparing Nucleic Acid Sequences by Hybridization to Arrays of Oligonucleotides: Evaluation Using Experimental Models", 1992, Genomics 13:1008-1017	IAFP5989-98	402, 403, 802	R, NH, HE
518	Strezoska et al., 1991, "DNA Sequencing by Hybridization: 100 Bases Read by a Non-gel-based Method", Proc. Natl. Acad. Sci. 88:10089-10093	IAFP596005-09	402, 403, 802	R, NH, HE
519	T. Gress, J. Hoheisel et al., "Hybridization Fingerprinting of High-Density cDNA-Library Arrays with cDNA Pools Derived from Whole Tissues," Mammalian Genome, 1992 (609-619).	IAFP657894-904	402, 403, 802	R, NH, HE
520	Human Genome I, An International Conference on the status and future of research on the Human Genome, 1989	UTRF 293-297	402, 403, 802, MD, MP	R, NH, HE, SD
521	V. Tobe, S. Taylor et al, "Single-Well Genotyping of Diallelic Sequence Variations by a Two-Color ELIA-Based Oligonucleotide Ligation Assay," Nucleic Acids Research, 1996 (3728-3732)	IAFP657905-10	402, 403, 802	R, NH, HE

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522	Memo re: Search Strategy Data Analysis from Lipshutz to Affy Research Institute, Attn: Jennifer Tripp. 1991	AG 1215-1224	402, 403	R
523	Announcement from Daniel H. Wagner Associates	AG 74	402, 403, 802	R, NH, HE
524	Walter Bodmer, Ph.D., Charles R. Cantor, Ph.D., Co-chairmen of The International Conference on the status and future of research on the Human Genome, Human Genome III, 1991	AVI_131963-2005	402, 403, 802	R, NH, HE
525	X. Chen, K. Livak et al, "A Homogeneous, Ligase-Mediated, DNA Diagnostic Test" Genome Research, 1998 (549-556).	IAFP657911-20	402, 403, 802	R, NH, HE
526	U. Maskos and E.M. Southern, A Study of Oligonucleotide Reassociation Using Arrays of Oligonucleotides Synthesized on a Glass Support, Nucleic Acids Research, 21(20): 4663-69 (1993)	IAFP13225-30	402, 403, 802	R, NH, HE
527	U.S. Patent No. 5,889,165	AVI_40270-309	402, 403	R
528	U.S. Patent No. 5,244,636		NP, 402, 403	R, AV
529	U.S. Patent No. 5,244,813		NP, 402, 403	R, AV
530	U.S. Patent No. 5,250,264		NP, 402, 403	R, AV
531	U.S. Patent No. 5,298,741		NP, 402, 403	R, AV
532	U.S. Patent No. 5,320,814		NP, 402, 403	R, AV
533	U.S. Patent No. 5,512,490		NP, 402, 403	R, AV
534	U.S. Patent No. 5,633,972		NP, 402, 403	R, AV
535	U.S. Patent No. 5,814,524		NP, 402, 403	R, AV
536	U.S. Patent No. 6,023,540		NP, 402, 403	R, AV
537	U.S. Patent No. 6,200,737 B1		NP, 402, 403	R, AV
538	U.S. Patent No. 6,266,459 B1		NP, 402, 403	R, AV

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539	U.S. Patent No. 6,327,410 B1		NP, 402, 403	R, AV
540	U.S. Patent No. 6,406,845 B1		NP, 402, 403	R, AV
541	U.S. Patent No. 6,482,593 B2		NP, 402, 403	R, AV
542	U.S. Patent No. 6,859,570 B2		NP, 402, 403	R, AV
543	U.S. Patent No. 7,115,884 B1		NP, 402, 403	R, AV
544	PCT/US93/03448		NP, 402, 403	R, AV
545	JP 513204/94		NP, 402, 403	R, AV
546	EP 94902248.7		NP, 402, 403	R, AV
547	Canada 2128413		NP, 402, 403	R, AV
548	PCT/US93/11039		NP, 402, 403	R, AV
549	App. No. 10/920,637		NP, 402, 403	R, AV
550	PCT/US98/05025		NP, 402, 403	R, AV
551	PCT/US99/20914		NP, 402, 403	R, AV
552	PCT/US98/09163		NP, 402, 403	R, AV
553	App. No. 09/287,573		NP, 402, 403	R, AV
554	App. No. 11/040,504		NP, 402, 403	R, AV
555	PCT/US98/21193		NP, 402, 403	R, AV
556	<i>Randomly-Ordered Addressable High-Density Optical Sensor Arrays</i> , K.L. Michael et al, 70 Anal. Chem. 1242-8 (1998)		NP, 402, 403, 802	R, NH, HE, AV
557	Ordered Nanowell Arrays, P. Pantano et al, 8 Chem. of Materials, 2832-5 (1996)		NP, 402, 403, 802	R, NH, HE, AV
558	U.S. Patent No. 5,545,531 (D001)	AVI_38924-38		
559	Affy Lab Notebook #58 (D002)	AVI_77840-945		
560	Flowcell/Probe Array in cross section [Drawing]		402, 403	R

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	(D003)			
561	Multiple "Flow" cells -- Section A-A [Drawing] (D004)		402, 403	R
562	Top view -- Single Flowcell [Drawing] (D005)	-	402, 403	R
563	Probe Array Flowcell -- Multiple Probe Arrays [Drawing] (D006)		402, 403	R
564	U.S. Patent No. 5,545,531 File History (D007)	AVI_1864-984		
565	Affy Supplemental Response to Illumina 1st Set of Rogs (D009)		402, 403, ID, MD	R, SD
566	'149 Patent (D010)	AVI_141988-2003	402, 403	R
567	'149 File History (D011)	IAFP632138-367	402, 403, 802	R, NH, HE
568	U.S. Patent No. 5,143,854 (D012)	AVI_38412-38		
569	WO 92/10092 (D013)	IAFP4251-364	402, 403	R
570	WO 90/15070 (D014)		402, 403	R
571	U.S. Patent Application Numbers 08/249188, 08/082937, and 07/624120 (D015)		402, 403, MD	R, SD
572	U.S. Patent No. 5,384,261 (D016)	AVI_38500-15	402, 403	R
573	"Multiplex metallica" article (D017)	AVI_2813-14	402, 403, 802	R, NH, HE
574	Goss(Tusher) Notebook No. 052, dated 06/29/1993 (D018)	AVI_139319-403		
575	Article by Tusher et al., titled "Empirical bayes analysis of a microarray experiment; gene expression comparison: Statistical Data Included" (D019)		402, 403, 802	R, NH, HE
576	Article by Tusher et al., titled "Significance analysis of microarrays applied to the ionizing radiation response" (D020)		402, 403, 802	R, NH, HE
577	U.S. Patent Application No. 08/255682 (D021)	IAFP630971-1012	402, 403	R

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578	U.S. Patent No. 6,399,365 (D022)	IAFP1241-300		
579	U.S. Patent No. 6,399,365 Prosecution History (D023)	IAFP1301-590		
580	U.S. Patent 6,355,432 B1 (D040)			
581	Fodor et al, "Light-Directed, Spatially Addressable Parallel Chemical Synthesis" (D041)	AVI_3210-16		
582	Pease et al, "Light-generated Oligonucleotide Arrays for Rapid DNA Sequence Analysis" (D042)	AVI_3056-60	402, 403	R
583	Invention Disclosure Form (D044)	AVI_133303-13		
584	Declaration of Dr. Solas (D045)	AVI_107123-31	402, 403, 802	R, NH, HE
585	Pirrung and Bradley, "Comparison of Methods for Photochemical Phosphoramidite-Based DNA Synthesis" (D046)		402, 403, 802	R, NH, HE
586	Notebook #036, Lipshutz (D047)	AVI_76767-804		
587	U.S. Patent No. 5,795,716 Patent (D048)			
588	Letter from Crkvenjakov to Lipshutz (D049)	IAFP597826	402, 403, ID, 802	R, NH, HE
589	Human Genome Organization, updated list of addresses (D050)	AVI_131330-37	402, 403, 802, 901, 602	R, NH, HE, A, PK
590	Report on the Sequencing by Hybridization Workshop, Moscow, USSR - "SBH - An Idea Whose Time has Probably Come" (D051)	IAFP598480-92	402, 403, 802, 901, 602	R, NH, HE, A, PK
591	The International Workshop on Sequencing Hybridization Program (D052)	IAFP598513-612	402, 403, 802, MD, 901, 602	R, NH, HE, SD, A, PK
592	Pevzner et al, "Towards DNA Sequencing Chips" (D053)	AFF-HYS3282-313	402, 403, 802, 901, 602	R, NH, HE, A, PK
593	U.S. 5,795,716 File History (D054)	AVI_1-428		
594	U.S. 6,607,887 B2 (D055)		402, 403	R

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595	Email re Illumina licensing (D056)	AVI_55770-71	402, 403, 701	R, O
596	Proposal between Illumina and Affymetrix (D057)	AVI_92431	402, 403, 802	R, NH, HE
597	Gunderson et al, "Mutation Detection by Ligation to Complete n-mer DNA arrays" (D058)	AVI_2512-23		
598	Fan et al, "Parallel Genotyping of Human SR's using Generic High-Density Oligonucleotide Tag Arrays" (D059)	AVI_2372-79		
599	Email from Lipshutz to Fan (D060)	IAFP598288-89	402, 403, 802	R, NH, HE
600	Email from Yap to Lipshutz re Luminex (D061)	AVI_97922	402, 403	R
601	Email re Luminex (D062)	AVI_55631	402, 403	R
602	Email from Diekman to Lipshutz (D063)	AVI_93228-29	402, 403, 802	R, NH, HE
603	Various Documents (D064)		402, 403, 802, ID, MD	R, NH, HE, SD
604	Illumina's First Notice of Deposition pursuant to Fed. R. Civ. P. 30(b)(6) (D065)		402, 403	R
605	Illumina's Second Notice of Deposition pursuant to Fed. R. Civ. P. 30(b)(6) (D066)		402, 403	R
606	Affymetrix statistical algorithms description document (D067)	AVI_55126-53	402, 403	R
607	Letter re services agreement between Wagner Associates and Affymax (D068)	AVI_143260-67	402, 403	R
608	Grant Award Notice (addressed to Fodor at Affymax) (D069)	AVI_142657-724	402, 403	R
609	Affymetrix financial document re licenses (D070)	AVI_134569-603	402, 403	R
610	Letter between Affymetrix and Axon (D071)	AVI_81551-52	402, 403	R
611	Application 07/492,462 (D072)			
612	U.S. Patent No. 6,646,243 (D073)	AVI_47056-106		
613	Declaration of Professor Lubert Stryer, EP 0 619 321	AVI_101140-41	402, 403, 802	R, NH, HE

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	(D074)			
614	Declaration of Professor Lubert Stryer, EP 0 373 203 (D075)	AVI_102978-87	402, 403, 802	R, NH, HE
615	Notebook #029, Lubert Stryer (D076)	AVI_77698-737		
616	VLSIP Expansion (D077)	AVI_99068-82	402, 403	R
617	U.S. Patent No. 5,384,261 (D078)	AVI_38500-15	402, 403	R
618	U.S. Patent No. 6,399,365 (D079)	IAFP1241-1300		
619	UK Patent 2 129 551 A (D080)	IAFP13285-92	402, 403, 802	R, NH, HE
620	U.S. Patent 5,571,639 (D081)	AVI_39061-86	402, 403	R
621	Presentation: Genotyping Products Positioning, August 2004 (D082)	AVI_59979-060028	402, 403, 105	R, AI
622	Email from G. Fergus (D083)	AVI_63228-29	402, 403	R
623	Affymetrix emails (D084)	AVI_65029-32	402, 403, MD	R, SD
624	Affymetrix document entitled "Illumina competitive positioning" (D085)	AVI_73533-40	402, 403	R
625	2003-11-20 Illumina competitive summary (D086)	AVI_80431-9	402, 403, 802	R, NH, HE
626	Affymetrix emails (D087)	AVI_57177-82	402, 403, 802	R, NH, HE
627	Affymetrix emails (D088)	AVI_57183-84	402, 403, 802	R, NH, HE
628	Commercial Monthly Report, June 2004 (D089)	AVI_84586-96	402, 403, 802	R, NH, HE
629	Fergus email re Parrallel pricing	AVI_82345-49	402, 403, MD, 802	R, SD, NH, HE
630	Affymetrix emails (D091)	AVI_57038-41	402, 403, MD, 802	R, SD, NH, HE
631	Affymetrix emails (D092)	AVI_57522-24	402, 403, MD, 802	R, SD, NH, HE
632	Affymetrix emails (D093)	AVI_81824-25	402, 403, 802	R, NH, HE
633	Affymetrix emails (D094)	AVI_56826-28	402, 403, 802	R, NH, HE
634	Affymetrix emails (D095)	AVI_56550-51	402, 403, 802	R, NH, HE

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635	Affymetrix emails (D096)	AVI_56663-64	402, 403, 802	R, NH, HE
636	Affymetrix emails (D097)	AVI_56145	402, 403, 802	R, NH, HE
637	Affymetrix emails (D098)	AVI_56898-99	402, 403, 802	R, NH, HE
638	Affymetrix emails (D099)	AVI_58680-83	402, 403, 802	R, NH, HE
639	Affymetrix emails (D100)	AVI_64034-38	402, 403, 802	R, NH, HE
640	Affymetrix emails (D101)	AVI_56850-51	402, 403, 802	R, NH, HE
641	Affymetrix emails (D102)	AVI_56266-72	402, 403, 802	R, NH, HE
642	Affymetrix emails (D103)	AVI_63648-49	402, 403, 802	R, NH, HE
643	Affymetrix emails (D104)	AVI_80482-87	402, 403, 802	R, NH, HE
644	Affymetrix emails (D105)	AVI_82499-501	402, 403, 802	R, NH, HE
645	Affymetrix emails (D106)	AVI_57574-75	402, 403, 802, 701	R, NH, HE, O
646	Affymetrix emails (D107)	AVI_57752-54	402, 403, 802	R, NH, HE
647	Affymetrix emails (D108)	AVI_64093-97	402, 403, 802	R, NH, HE
648	Affymetrix emails (D109)	AVI_58766-68	402, 403, 802	R, NH, HE
649	Affymetrix emails (D110)	AVI_56537-43	402, 403, MD	R, SD
650	Illumina's Fourth Notice of Deposition (D111)		402, 403	R
651	Affymetrix emails (D112)	AVI_64677	402, 403	R
652	Affymetrix emails (D113)	AVI_57905-06	402, 403, 802	R, NH, HE
653	Affymetrix emails (D114)	AVI_57735-36	402, 403, 802	R, NH, HE
654	Subpoena of Besemer (D115)		402, 403	R
655	US Patent No. 6,511,277 B1 (D116)	AVI_45640-63	402, 403	R
656	Declaration of Stephen Fodor in the matter of EP 0 619 321 (D117)	IAFP6084-88	402, 403	R
657	Declaration of J. Leighton Read in the matter of EP 0 619 321 (D118)	IAFP6185-88	402, 403	R

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658	Declaration of Michael Pirrung (Affy v. Synteni and Incyte) (D119)	IAFP5291-311	402, 403, 802	R, HE, NH
659	Notice of Opposition to EP 0 619 321 (D120)		402, 403, 802	R, HE, NH
660	Opposition to patent (D121)		402, 403, 802	R, HE, NH
661	U.S. Patent No. 6,646,243 (D122)			
662	Pirrung Lab Notebook #05, 11/16/1988 (D123)	AVI_76805-40		
663	Pirrung Notebook #19, May 2, 1989 (D123)	AVI_138595-694	ID	
664	Drmanac et al, "Sequencing by Oligonucleotide Hybridization: A Promising Framework in Decoding of the Genome Program?" (D124)	IAFP4410-23	402, 403, 802	R, NH, HE
665	Notice of Subpoena of Derek H. Bernhart (D125)		402, 403	R
666	06/18/91 Agreement between Wagner Associates and Bernhart (D130)	AG70-72	402, 403, 802	R, NH, HE
667	08/01/1993 Performance Evaluation of Bernhart (D131)	AG82-87	402, 403, 802	R, NH, HE
668	08/01/1994 Performance Review of Bernhart (D132)	AG75-81	402, 403, 802	R, NH, HE
669	Newsletter re Affymetrix dated 9/93 (D133)	AG119	402, 403, 802	R, HE, NH
670	Letter re services agreement between Wagner Associates and Affymax (D134)	AVI_143260-67	402, 403, 802	R, NH, HE
671	10/24/91 Memo from P. Coassin (D135)	AVI_104919-20	402, 403, 802, 901	R, HE, NH, A
672	Fodor et al "Multiplexed biochemical assays with biological chips" (D136)	AVI_2401-02	402, 403	R
673	Pease declaration for Fodor patent application No. 624,114 (D137)	IAFP5236-43	402, 403	R
674	U.S. App. No. 08/168,904 (D138)	IAFP13528-14133	402, 403	R
675	Lab Notebook, Read #010 (D139)	AVI_140525-37		
676	Lab Notebook, Read #02 (D140)	AVI_138496-594		

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677	U.S. Patent Application No. 07/362,901 (D141)	IAFP15081-139	402, 403	R
678	6/1/92 Performance Evaluation of Jevons at Wagner (D141)	AG 109-114	402, 403, 802	R, NH, HE
679	6/1/93 Performance Evaluation of Jevons at Wagner (D142)	AG 104-108	402, 403, 802	R, HE, NH
680	6/1/94 Performance Evaluation of Jevons at Wagner (D143)	AG 99-103	402, 403, 802	R, NH, HE
681	6/1/95 Performance Evaluation of Jevons at Wagner (D144)	AG 94-98	402, 403, 802	R, NH, HE
682	File History if U.S. Patent No. 6,607,887 (D145)	AVI_430-730	402, 403, 802, MD, ID	R, HE, NH, SD
683	Newsletter re Affymetrix dated 9/93 (D146)	AG119	402, 403, 802	R, NH, HE
684	6/1/89 Agreement as to Patent, Copyrights, and Inventions between Wagner and Jevons (D147)	AG90-91	402, 403, 802	R, NH, HE
685	U.S. 5,795,716 File History (D148)	IAFP182-598		
686	Multi-page document headed, "Very Large Scale Immobilized Polymer Synthesis" (D149)	IAFP15086-148	402, 403, ID, MD	R, SD
687	Fodor Lab Notebook No. 26 (D150)	AVI_138964-052		
688	1991-06-14 Office Memo, Drmanac and Crkvenjakov tentative agenda for June 28 visit (D151)	IAFP598085	402, 403	R
689	Human Genome II Conference, Official Program & Abstracts (October 22-24 1990) (D152)	AVI_134115-75; IAFP598371-430	402, 403, MD, 802	R, SD, NH, HE
690	Handwritten Notes (D153)	AVI_134087-114	402, 403, MD	R, SD
691	European Patent Application 0 392 546 A2 (D154)	IAFP2314-29	402, 403	R
692	Amendment and Reply to Office Action Pursuant to 37 CFR 1.111 (D155)	AVI_145106-220		
693	Redacted email chain (D156)	AVI_92321-27	402, 403, 802	R, HE, NH

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694	U.S. Patent Application No. 2004/0029115 A9 (D158)		402, 403	R
695	Letter from Smith to Nussbacher (D160)	AVI_201303	402, 403, 802	R, HE, NH
696	Letter from Ching to Nussbacher (D161)	AVI_199923-24	402, 403, 802	R, HE, NH
697	Ching letter to Fodor re draft patent application (D162)	AVI_200704-05	402, 403, 802	R, HE, NH
698	Letter from Ching to Fodor (D163)	AVI_200765	402, 403, 802	R, HE, NH
699	Letter from Ching to Nussbacher (D164)	AVI_200758-64	402, 403, 802	R, HE, NH
700	US Patent Application no. 07/624114 (D165)	IAFP13538-695		
701	Invoice #53217, William Smith, June 28, 1990 (D166)	AVI_133250-302		
702	Declaration of Stephen Fodor in the matter of EP 0 619 321 (D167)	IAFP6084-88	402, 403	R
703	Letter from Bechtold to Fodor (D168)	AVI_131366-68	402, 403, 802	R, HE, NH
704	Foote letter to Heathington (D169)	UTRF49-51	402, 403, 802	R, HE, NH
705	Foote notebook (D170)	RSF257-290	402, 403, 802	R, HE, NH
706	Foote lab notebook (D170A)	RSF291-339	402, 403, 802	R, HE, NH
707	Approval Slip (D171)	RSF93-168	402, 403, 802, MD	R, HE, NH, SD
708	Research Proposal (D172)	RSF1-92	402, 403, 802, MD	R, HE, NH, SD
709	Summary of presentations at 10/26/1989 Wolf Tap Genome Sequencing Conferenc (D173)	IAFP597861-82	402, 403, 802, 901, MD	R, HE, NH, SD
710	October 30 Schedule (D174)	IAFP598039-40	402, 403, 802, 901, MD	R, HE, NH, SD
711	Prospects for a miniaturized, simplified and frugal human genome project (D175)	IAFP598743-52	402, 403, 802, 901	R, HE, NH, A
712	Houghton letter to Foote (D176)	UTRF69-70	402, 403, 802	R, HE, NH
713	Hiltner letter to Wheeley (D177)	UTRF12	402, 403, 802	R, HE, NH

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714	Venture First Associates, Invention Disclosure Form (D178)	UTRF13	402, 403, 802	R, HE, NH
715	Houghton letter to Gessler (D179)	UTRF53	402, 403, 802	R, HE, NH
716	Schmitt letter to Foote (D180)	UTRF612-15	402, 403, 802	R, HE, NH
717	'961 Patent (D181)	AVI_39042-60	402, 403	R
718	Fodor et al, "Light-Directed, Spatially Addressable Parallel Chemical Synthesis" (D182)	UTRF488-94		
719	Foote letter to O'Leary (D183)	LNG123-24	402, 403, 802	R, HE, NH
720	U.S. Patent Application No. 07/362,901 (D184)	IAFP15081-217	402, 403	R
721	Foote letter to Norviel re 05556961 patent (D185)	AVI_195439-40	402, 403, 802	R, HE, NH
722	Weaver letter to Foote (D186)	LNG2-7	402, 403, 802, MD	R, HE, NH, sd
723	Agreement Concerning US Patent '961 (D187)	AVI_145054-79	402, 403	R
724	Trip Report by Stodolsky re visit to Crkvenjakov Lab in 1989 (D188)	DOE466-71	402, 403, 802, 901	R, HE, NH, A
725	12/6/1991 Report of Foreign Travel of Richard A. Sachleben (D189)	DOE16-23	402, 403, 802, 901	R, HE, NH, A
726	List of parties (D200)		402, 403	R
727	Page from Affymetrix's 10-K re competition (D201)		402, 403, MP	R
728	Illumina's Third Notice of Deposition - 30(b)(6) (D2020)		402, 403	R
729	Illumina's Fourth Notice of Deposition - 30(b)(6) (D203)		402, 403	R
730	Handwritten notes (D204)		402, 403, 802	R, HE, NH
731	List of parties (D205)		402, 403	R
732	9/20/04 Affymetrix emails (D206)	AVI_62650	402, 403, 802	R, HE, NH
733	10/06/04 Affymetrix emails (D207)	AVI_82323-25	402, 403, 802	R, HE, NH

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734	05/14/04 Affymetrix emails (D208)	AVI_151227-28	402, 403, 802	R, HE, NH
735	10/18/04 Affymetrix emails (D209)	AVI_157317-19	402, 403, 802	R, HE, NH
736	02/25/05 Affymetrix emails (D210)	AVI_153807	402, 403, 802	R, HE, NH
737	06/13/05 Affymetrix emails (D211)	AVI_172017	402, 403, 802	R, HE, NH
738	02/14/05 Affymetrix emails (D212)	AVI_153287-88	402, 403	R
739	04/30/05 Affymetrix emails (D213)	AVI_82205-06	402, 403, 802	R, HE, NH
740	05/19/04 Affymetrix emails (D214)	AVI_81852-856	402, 403, 802, MD	R, HE, NH, SD
741	11/02/04 Affymetrix emails (D215)	AVI_59176	402, 403	R
742	11/01/04 Affymetrix emails (D216)	AVI_59177-85	402, 403	R
743	2004-10-26 Affymetrix emails(D217)	AVI_59359	402, 403	R
744	2004-11-01 Yap email (D218)	AVI_64908	402, 403, 802	R, HE, NH
745	2005-05-17 Competitive Summit agenda (D219)	AVI_73490-92	402, 403	R
746	Competitive summit notes/outline (D220)	AVI_73501-02	402, 403	R
747	May 2004, Commercial Monthly Report (D221)	AVI_93829-844	402, 403, 802	R, HE, NH
748	Affymetrix emails (D222)	AVI_56900	402, 403, 802	R, HE, NH
749	Affymetrix emails (D223)	AVI_56121-24	402, 403, 802	R, HE, NH
750	2003-03-20 CIDR pre-meeting notes and agenda (D224)	AVI_60101-05	402, 403, 802	R, HE, NH
751	International Patent Application Number WO 93/17126 (D200)	IAFP13424-527	402, 403	R
752	12/24/91 Letter from Kramer (D201)	PHRI931-950	402, 403, 802, MD	R, HE, NH, SD
753	1/5/06 Letter from Bill Hone (D202)		402, 403, 802, 901	R, HE, A, NH
754	1/17/95 Letter from Weinstein to Diekman (D203)	PHRI1977	402, 403, 802	R, HE, NH
755	Article by Chetverin and Kramer titled "Oligonucleotide Arrays: New Concepts and		402, 403, 802	R, HE, NH

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	Possibilities" from <i>Biotechnology</i> , Vol. 12 Nov. 1994 (D204)			
756	2/13/95 Letter from Fodor to Weinstein (D205)	PHRI1981	402, 403	R
757	2/28/95 Email from Kramer to Weinstein (D206)	PHRI1982	402, 403, 802	R, HE, NH
758	5/26/95 Handwritten notes of Fred Kramer (D207)	PHRI1986	402, 403, 802, 901	R, HE, NH, A
759	11/2/95 Letter from Kramer to Norviel (D208)	PHRI1987	402, 403, 802, 901	R, HE, NH, A
760	Article by Chetverin and Kramer titled "Sequencing of pools of nucleic acids on oligonucleotide arrays" (D209)	AVI_95847-195864	402, 403, 802	R, NH, HE
761	Article by Chetverin and Kramer titled "Total Genome Sequencing with Oligonucleotide Arrays" (D210)	AVI_95865-195902	402, 403, 802	R, NH, HE
762	Kramer's Handwritten Notes (D211)	PHRI1993	402, 403, 802, 901	R, HE, NH, A
763	Proposed Term Sheet for agreement between Affymetrix and New York Institute of Health (D212)	PHRI1995-001998	402, 403, 802, 901	R, HE, NH, A
764	3/1/96 Handwritten Notes (D213)	PHRI2006	402, 403, 802, 901	R, HE, NH, A
765	3/1/1996 Handwritten Notes (D214)	PHRI2008-002011	402, 403, 802, 901	R, HE, NH, A
766	3/9/1996 Letter to Norviel from Kramer (D215)	PHRI2015-002016	402, 403, 802, 901	R, HE, NH, A
767	5/6/1996 Letter to Kramer from Gingeras (D216)	PHRI2023-002025	402, 403, MD	R, SD
768	5/24/1996 Memo to Norviel from Kramer (D217)	PHRI2030-002031	402, 403, 802, 901	R, HE, NH, A
769	10/23/1996 Letter from Hone to Liebeschuetz (D218)	PHRI2219	402, 403, 802, 901	R, HE, NH, A
770	Handwritten Notes re conversation with Norviel, Gingeras, and Hone re Affymetrix contract on 1/3/1997 [redacted version] (D219A)	PHRI2320 (redacted)	402, 403, 802, 901	R, HE, NH, A
771	6/2/1997 Letter to Kramer from Norviel (D220)	PHRI2350	402, 403	R
772	5/30/1997 License Agreement between Affymetrix and PHRI (D221)	PHRI2351-002383	402, 403	R

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773	4/11/2000 Consulting Agreement between Affymetrix and Oxford Gene Technology (D222)	PHRI1442	402, 403	R
774	9/8/1998 Letter from McFarlane (Hone's seceratary) to Kramer (D223)	PHRI1707	402, 403, 802	R, HE, NH
775	Illumina's Third Notice of Deposition - 30(b)(6) (D225)		402, 403	R
776	Illumina's Fourth Notice of Deposition - 30(b)(6) (D226)		402, 403	R
777	Espinosa email (D227)	AVI_92374-81	402, 403, 802	R, HE, NH
778	2004-06-17 Sherr email (D228)	AVI_92423-27	105, 402, 403	R, AI
779	Collaboration Agreement between the Engelhart Institute of Molecular Biology and the Affymax Research Institute (D229)	AVI_195463-67	402, 403	R
780	2003-06-30 Marfin letter to Sherr (D230)	AVI_89442	402, 403, 802	R, HE, NH
781	2003-08-11 Sherr letter to Marfin (D231)	AVI_74694-96	402, 403, MD	R, HE, NH
782	2003-11-17 Reiter letter to Sherr (D232)	AVI_55623	402, 403, 802	R, HE, NH
783	2005-04-05 Affymetrix press release re Expanded Genomic Technologies Program (D233)	AVI_132670-71		
784	2004-05-28 License agreement between Affymetrix and Genospectra (D234)	AVI_98404-25	105, 402, 403	R, AI
785	Genospectra projected capitalization (D236)	AVI_81752-55	402, 403	R
786	2000-06-16 Press release (D237)	AVI_132307-8		
787	License Agreement between Affymetrix and Galvoscan (D239)	AVI_90337-49	402, 403	R
788	IP Transfer and License Agreement (Perlegen to Affymetrix) (D242)	AVI_90947-64	402, 403	R
789	IP Transfer and License Agreement (Affymetrix to Perlegen) (D243)	AVI_91208-60	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
790	Gene Logic information (D244)		402, 403, 802	R, NH, HE
791	Richard Rava CV (D245)	AVI_196069-74	402, 403, 802	R, HE, NH
792	2004-01-23 Nicholls email (D246)	AVI_72730-32	402, 403, 802	R, HE, NH
793	2004-11-01 Yap email (D247)	AVI_64908	402, 403, 802	R, HE, NH
794	2002-04-01 Cartridge barcode document (D248)	AVI_135052-58		
795	Grant Application (D249)	AVI_74726-917	402, 403	R
796	Human Genome Project pack (D250)	AVI_65050-79	402, 403	R
797	Patent Application 09/247430 (D251)	IAFP631703-930	402, 403	R
798	3/28/88 DOE Internal Memo re Research Grant (D253)	DOE458-459	402, 403, 802, 901	R, A, HE, NH
799	Trip Report by Stodolsky re visit to Crkvenjakov Lab in 1989 (D254)	DOE466-471	402, 403, 802, 901	R, HE, NH, A
800	Human Genome Initiative Review Panel Roster (D255)	IAFP640703-05	402, 403, 802	R, A, HE, NH
801	2/26/1989 Letter from Crkvenjakov to Stodolsky (D256)	IAFP640717	402, 403, 802, 901	R, A, HE, NH
802	Report titled "Prospects for Miniaturized, Simplified and Frugal Human Genome Project" (D257)	DOE520-46	402, 403, 802, 901	R, A, HE, NH
803	10/4/1989 Letter from Crkvenjakov to Stodolsky (D258)	IAFP598036	402, 403, 802, 901	R, A, HE, NH
804	10/26/1989 Wolf Trap Genome Sequence Conference Itinerary (D259)	IAFP597859-60	402, 403, 802, 901	R, A, HE, NH
805	Summary of presentations at 10/26/1989 Wolf Tap Genome Sequencing Conference (D260)	IAFP597861-82	402, 403, 802, 901, MD	R, A, HE, SD, NH
806	Document re human genome (D261)	IAFP598101-17	402, 403, 802, 901	R, A, NH, HE
807	DOE/NIH Human Genome Contractors/Grantee Workshop, November 3-4, 1989 (D262)	IAFP597958-8013	402, 403, 802, 901, MD	R, NH, A, HE, SD

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808	List of Contractors and Grantees that participated in the 11/4/1989 DOE Human Genome Project Contractor/Grantee Workshop (D263)	IAFP597916-25	402, 403, 802, 901	R, HE, NH, A
809	1990 "Human Genome Quarterly" Newsletter re the DOE Contractor/Grantee Workshop (D264)	IAFP598014-25	402, 403, 802, 901	R, HE, A, NH
810	SBH Status Report by Stodolsky, 10/28/1989 (D265)	DOE472-73	402, 403, 802, 901	R, HE, A, NH
811	2/12/1990 Letter from Crkvenjakov to Stodolsky (D266)	DOE394-407	402, 403, 802, 901	R, A, HE, NH
812	Abstracts of papers presented at the 1990 meeting on Genome Mapping and Sequencing (D267)	IAFP598193-326	402, 403, 802, 901, MD	R, A, SD, HE, NH
813	8/8/1990 Letter re SBH proof-of-concept test w/ attachment outlining said test (D268)	DOE488-93	402, 403, 802, 901, MD	R, A, SD, HE, NH
814	12/6/1991 Report of Foreign Travel of Richard A. Sachleben (D269)	DOE16-23	402, 403, 802, 901	R, A, HE, NH
815	Department of Energy, Sequencing of DNA by Hybridization with Oligonucleotides Matrix (SHOM), 1992 (D270)	DOE832-39	402, 403, 802, 901	R, A, HE, NH
816	Technical Progress Report of DOE Grant re SBH w/ Oligonucleotide Matrix (head scientist: Mirzabekov) (D271)	DOE13-15	402, 403, 802, 901	R, A, HE, NH
817	Beattie letter to Cantor (D272)	IAFP640718-20	402, 403, 802, 901	R, A, HE, NH
818	Crkvenjakov letter to Beattie (D273)	IAFP640761	402, 403, 802, 901	R, A, NH, HE
819	Beattie letter to Crkvenjakov (D274)	IAFP640768-70	402, 403, 802, 901	R, A, HE, NH
820	Drmanac R. Miniaturization of Sequencing by Hybridization. The Sequencing Chip Concept Poster Presentation (D275)	IAFP598099-117	402, 403, 802, 901	R, A, HE, NH
821	Jacobson letter to Crkvenjakov (D276)	IAFP598050-53	402, 403, 802, 901	R, A, HE, NH
822	LexiGen confidential business plan, February 1990 (D277)	KB125-173	402, 403, 802, 901	R, A, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
823	Beattie fax to Brown (D278)	KB262-68	402, 403, 802, 901	R, A, HE, NH
824	Report on the Sequencing by Hybridization Workshop, Moscow, USSR - "SBH - An Idea Whose Time has Probably Come" (D279)	IAFP598480-91	402, 403, 802, 901	R, NH, HE, A
825	Grant Application 5-29-92, for Beattie (D280)	AVI_143475-508	402, 403, 802	R, HE, NH
826	Trace Lane CV with handwritten notes (D281)	IAFP12478-79	402, 403, 802, 901	R, A, HE, NH
827	Proprietary Information and Invention Agreement (D282)	AVI_82289-94	402, 403	R
828	Employee Termination Certificate (D283)	IAFP12507	402, 403, 802	R, HE, NH
829	Lane email (D284)	AVI_55913-15	402, 403, 802	R, NH, HE
830	Lane email (D285)	AVI_58477	402, 403	R
831	Lane email (D286)	AVI_58463-65	402, 403	R
832	Lane memo (D287)	IAFP12550-52	402, 403, 802	R, NH, HE
833	Balch email (D288)	IAFP12531	402, 403, 802	R, NH, HE
834	Marcus email (D289)	AVI_64239-40	402, 403, 802	R, NH, HE
835	Marcus email (D290)	AVI_63667-70	402, 403, 802	R, NH, HE
836	Marcus email (D291)	AVI_62960-69	402, 403, MD	R, SD
837	Fideler email (D292)	AVI_56015-16	402, 403, 802	R, NH, HE
838	Lane email (D293)	AVI_57101-06	402, 403, 802	R, NH, HE
839	Crowley email (D294)	AVI_57763	402, 403	R
840	Lane email (D295)	AVI_91544	402, 403	R
841	Raimond email (D296)	AVI_57547-49	402, 403, 802	R, NH, HE
842	Raimond email (D297)	AVI_63930-31	402, 403, 802	R, NH, HE
843	Competitive Positioning Session at WWSC--Focus on Illumina (982)	AVI_73572-73	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
844	2005-05-17 Competitive summit agenda (D299)	AVI_73490-92	402, 403	R
845	Presentation titled "Competition--Sales and Support Meeting February 2005" (D300)	AVI_84566-78	402, 403	R
846	Affymetrix document entitled "Illumina competitive positioning" (D301)	AVI_73533-40	402, 403	R
847	Presentation: Genotyping Products Positioning (D302)	AVI_73629-72	402, 403, 105	R, AI
848	Lane email re SR's (D303)	AVI_56385-93	402, 403, 802	R, NH, HE
849	Lane email re Illumina (D304)	AVI_60193-94	402, 403, 802	R, NH, HE
850	Commercial Monthly Report, June 2004 (D305)	AVI_84586-96	402, 403, 802	R, NH, HE
851	Fergus email re Parrallel pricing (D306)	AVI_82345-49	402, 403, 802, MD	R, SD, NH, HE
852	Letter from March re Harvard Partners in GeneChip Mendel Array (D307)	AVI_85166-72	402, 403, MD	R, SD
853	Lane email re 500K expectations on calls (D308)	AVI_155070-74	402, 403, 802	R, NH, HE
854	Press Release (D309)		402, 403	R
855	Employee Exit Interview (D310)	IAFP12453-54	402, 403, 802	R, NH, HE
856	Gunderson email re Illumina genotyping project-costs (D311)	IAFP547651-58	402, 403, 802	R, NH, NE
857	Weiss letter re Trace Lane (D312)	AVI_93271.1-72		
858	Notes on Office Depot paper and other related docs (D313)	IAFP12495-789	402, 403, 802, 901, MD	R, A, NH, HE
859	Subpoena of Chunwei Wang (D314)		402, 403	R
860	Algorithm to Compute Base Calls (D315)	AVI_80908-19	402, 403	R
861	U.S. Patent No. 5,795,716 (D316)	AVI_39650-99		
862	File History of US Patent No. 6,607,887 (D317)	AVI_430-730	402, 403	R
863	Illumina 5 th notice of deposition pursuant to 30b6		402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	(D318)			
864	Budgets and Forecasts Chart (D319)	AVI_196152	402, 403	R
865	Affymetrix Price List (D320)	AVI_135106-12		
866	GeneChip Price Catalog (D321)	AVI_135082-94		
867	Affymetrix Sales Proposal (D322)	AVI_151315-33	402, 403, MD	R, SD
868	2003 Invoice (D323)	AVI_196154 (native production)		
869	2003 Invoice (D324)	AVI_196157		
870	For the record, Deposition Exhibit 325 is a partial production of Affymetrix's 10K for the fiscal year ended December 31, 2004. (D325)		MP	R
871	Array Revenue (D326)	AVI_137433	402, 403	R
872	Software Revenue (D327)	AVI_137434	402, 403	R
873	Part to Product Mapping (D328)	AVI_201541		
874	Inventory Valuation Procedures (D329)	AVI_201540	402, 403	R
875	Part Description (D330)	AVI_201536	MP, 402, 403	R
876	Part Description (D331)	AVI_201537	MP, 402, 403	R
877	Chip and Instrument Revenues and Costs Excluding Variances (D332)	AVI_196156		
878	Affymetrix Manufacturing Variances by Quarter (D333)	AVI_196160		
879	Factors of Production - Chips (D334)	AVI_201542		
880	Internal Finance Package - January 2002 (D335)	AVI_195202-50		
881	Internal Finance Package - January 2005 (D336)	AVI_193090-147		
882	Instrument Production - 2002-2005 (D337)	AVI_196159		
883	Historical Equivalent Chip Output and Additional	AVI_196155	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Capacity Available by Quarter 2002-2005 (D338)			
884	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002-2005 (D339)	AVI_201538		
885	Affy press release (D340)		402, 403	R
886	Nicholls email re commercial and manufacturing reports for May (D341)	AVI_91885-911	402, 403, 802	R, NH, HE
887	2002-2005 RUO Array Complaints by Quarter (D342)	AVI_201539	402, 403	R
888	List of lost orders to Illumina (D343)	AVI_56491-93	402, 403, 802	R, NH, HE
889	OGT payment summary (D344)	AVI_201543	105	AI
890	Genzyme Molecular Oncology (D345)	AVI_201544	402, 403	R
891	Earned Royalty Chart (D346)	AVI_201545	402, 403	R
892	Drmanac subpoena (D347)		402, 403	R
893	European Patent Application 0 392 546 A2 (D348)	IAFP2314-29	402, 403	R
894	Drmanac R, Crkvenjakov R. Prospects for a Miniaturized, Simplified and Frugal Human Genome Project. Scientia Yugoslavica 1990;16:97-107. (D349)	IAFP598620-30	402, 403, 802	R, NH, HE
895	Program Schedule, May 1989 (D350)	IAFP598156-61	402, 403, 802, 901	R, NH, A, HE
896	SBH Poster (D351)	See oversized page	402, 403, 802, 901	R, NH, A, HE
897	1990-05-01 Letter from Lim to Drmanac (D352)	IAFP598064	402, 403, 802, 901	R, A, NH, HE
898	Human Genome II Conference, Official Program & Abstracts (October 22-24 1990 (D353)	IAFP598371-430	402, 403, 802, 901, MD	R, SD, A, HE, NH
899	1991-06-14 Office Memo, Drmanac and Crkvenjakov tentative agenda for June 28 visit (D354)	IAFP598085	402, 403	R
900	1994-12-22 Letter from Drmanac to Norviel re SBH Format 3 (D355)	AVI_149699-705	402, 403, 802	R, NH, HE

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901	WO Patent Application No. 95/09248 (D356)	IAFP596185-277	402, 403	R
902	1990-09-30 Genome Sequencing Conference II Agenda and Crkvenjakov conference notes (D357)	IAFP598369-70; IAFP598128-35	402, 403, 802	R, NH, HE
903	1995-05-10 BioChip Array Technologies, Fabrication and Applications conference (D358)	IAFP643752-71	402, 403, 802	R, NH, HE
904	Human Genome Organization, updated list of addresses (D359)	AVI_131330-37	402, 403, 802	R, NH, HE
905	Drmanac et al. SBH and the Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes," In Lim, H. and Fickett, J. W., Cantor, C.R. and Robbins, R.J., editors, The 2nd International Conference on Bioinformatics, Supercomputing and Complex Genome Analysis, Singapore, World Scientific 1992:121-134 (D360)	IAFP622294-307	402, 403, 802	R, NH, HE
906	The Human Genome Organisation updated List of addresses (D361)	AVI_131330-37	402, 403, 802	R, NH, HE
907	Human Genome News, September, 1991 (D362)	AVI_132006-29	402, 403, 802	R, NH, HE
908	Molodow letter to LaRose re consultant and patent agreement (D363)	AVI_195287-314	402, 403	R
909	Fax, Engelhardt Institute to Kaster, from Mirzabekov, 6-3-92 (D364)	AVI_195700	402, 403, 802	R, NH, HE
910	Fax, Kaster to Mirzabekov, 6-13-92 (D365)	AVI_195691-97	402, 403	R
911	Letter, Fodor to Mirzabekov 9-18-92 (D366)	AVI_195665	402, 403	R
912	Collaboration Agreement between the Engelhardt Institute of Molecular Biology and the Affymax Research Institute, 1992 (D367)	AVI_201316-20	402, 403	R
913	Grant Application 5-29-92, for Beattie (D368)	AVI_143475-508	402, 403	R
914	Fax, Fodor to Dupere, 9-2-92 re Gel Matrix Geosensor (D369)	AVI_143359-60	402, 403	R

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915	Letter, Mirzabekov to Fodor, 10-15-93, new patent applications (D370)	AVI_195636	402, 403, 802	R, NH, HE
916	Letter, 2-13-95, Fodor to Weinstein re Diekman letter (D371)	PHRI1981	402, 403	R
917	License Agreement, PHRI and Affymetrix, 1996-1997 (D372)	AVI_195717-49	402, 403	R
918	Email re "Nakamura Reagent Order / Japan Sales Person" (D383)	IAFP615772	402, 403, 802, 901	R, NH, HE, A
919	Crkvenjakov R. Talk Presented at DOE/NIH Human Genome Sequencing Conference, Handwritten notes and transcription. (Sante Fe, NM) October 29, 1990 (D390)	IAFP598136-41	402, 403, 802, 901	R, NH, HE, A
920	Crkvenjakov R. Talk Presented at DOE/NIH Human Genome Sequencing Conference, Handwritten notes and transcription. (Sante Fe, NM) October 29, 1990 (D391)	IAFP598136-41	402, 403, 802, 901	R, NH, HE, A
921	Set of documents produced by Crkvenjokov (D392)	IAFP597818-82	402, 403, 802, 901, MD	R, NH, HE, A
922	Set of documents produced by Crkvenjokov (D393)	IAFP640203-926	402, 403, 802, 901, MD	R, NH, HE, A
923	Invoice #53217, William Smith, June 28, 1990 (D400)	AVI_133250-302		
924	US Patent Application no. 07/624114 (D401)	IAFP13538-695		
925	Abandoned application 08/168,904 (D402)	IAFP13528-4133	402, 403	R
926	Docs related to Dower 626,730 (D403)	AVI_200971-1066	402, 403, MD	R, SD
927	Invoice 62341, January 30, 1991 (D405)	AVI_134228-31		
928	1994-12-22 Letter from Drmanac to Norviel re SBH Format 3 (D406)	AVI_149699-705	402, 403, 802, MD	R, NH, HE, SD
929	11/2/95 Letter from Kramer to Norviel (D407)	PHRI1987	402, 403, 802	R, NH, HE
930	Chetverin and Kramer "Novel Oligonucleotide Arrays and their use for sorting..." (D408)	AVI_195750-845	402, 403, 802, 901	R, NH, HE, A

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931	Norviel to Kramer with proposed term sheet (D409)	AVI_195996-6000	402, 403	R
932	Kramer to Norviel (D410)	AVI_195994-95	402, 403, 802	R, NH, HE
933	Kramer to Norviel re licensing agreement (D411)	AVI_195926	402, 403, 802	R, NH, HE
934	License Agreement, PHRI and Affymetrix, 1996-1997 (D412)	AVI_195717-49	402, 403	R
935	Weinstein letter to Norviel re invoices (D413)	PHRI2619	402, 403	R
936	Fax from Norviel to McFarlane re: schedule of conference call between Hone and Norviel and McGarrigle (D414)	PHRI7547	402, 403	R
937	USPTO doc: Amendment (D415)	PHRI1370-86	402, 403	R
938	Norviel to Kramer re license agreement (D416)	AVI_195716	402, 403	R
939	09/247,430 Patent Application (D417)	IAFP631701-930	402, 403, 802, MD	R, HE, NH, SD
940	Foote letter to Norviel re 05556961 patent (D418)	AVI_195439-40	402, 403, 802	R, NH, HE
941	Molodow letter to LaRose re consultant and patent agreement (D419)	AVI_195287-314	402, 403, MD	R, SD
942	Norviel to Mizabekov re payment items and contract questions (D420)	AVI_195620-23	402, 403	R
943	Rlaures to Norviel re docs (D421)	AVI_199557-58	402, 403, 802	R, NH, HE
944	IP Transfer and License agreement (Affymetrix to Perlegen) (D422)	AVI_91208-60	402, 403	R
945	Invoice #53217, William Smith, June 28, 1990 (D423)	AVI_133250-302		
946	Ching letter to Fodor re draft patent application (D424)	AVI_200704-05	402, 403	R
947	Ching letter to Nussbacher re patent applications (D425)	AVI_199906-37	402, 403, MD	R, SD
948	Wolf Trap Genome Sequencing Conference October	IAFP597859-597882	402, 403, 802, 901, MD, ID	R, NH, HE, A, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	24-26, 1989 (D426)			
949	Abstracts of papers presented at the 1990 meeting on Genome Mapping and Sequencing (D427)	IAFP598193-326	402, 403, 802, 901, MD	R, NH, HE, A, SD
950	DOE/NIH Human Genome Contractors/Grantee Workshop, November 3-4, 1989, Santa Fe, NM, Abstracts (D428)	IAFP597958-8013	402, 403, 802, 901, MD	R, NH, HE, A, SD
951	DOE/NIH Human Genome Contractor/Grantee Workshop, November 3-4, 1989, Santa Fe, NM, Speaker Abstracts (D429)	IAFP597926-57	402, 403, 802, 901, MD	R, NH, HE, A, SD
952	Map Production Efforts, November 3, 1989 (D430)	IAFP597899-915	402, 403, 802, 901	R, NH, HE, A
953	Mathies 1991 Notes (D431)	RAM1-83	402, 403, 802	R, NH, HE
954	Human Genome II Conference Program and Abstracts, Oct. 22-24, 1990 (D432)	RAM192-251	402, 403, 802, 901, MD	R, NH, HE, A, SD
955	Mathies Composition Book (D433)	RAM84-191	402, 403, 802	R, NH, HE
956	Nicholls email re commercial and manufacturing reports for May (D434)	AVI_91885-911	402, 403, 802, MD	R, NH, HE, SD
957	Email re "Pricing for Additions to Sanger Effort--QUICK RESPONSE NEEDED" (D435)	AVI_161278-81	402, 403, 802	R, NH, HE
958	Email re "Dawn Madden Final Results" (D436)	AVI_59247-97	402, 403, MD	R, SD
959	Email re "ParAllele" (D437)	AVI_59611-12	402, 403	R
960	Email re "Price Approval Request" (D438)	AVI_57447-49	402, 403, 802	R, NH, HE
961	Email re "Illumina Expression Array Profile" (D439)	AVI_55389-92	402, 403, MD	R, SD
962	Email re "Illumina Competition" (D440)	AVI_63723	402, 403	R
963	Email re Illumina doc (D441)	AVI_75218-20	402, 403, MD	R, SD
964	Email re "Illumina Draft Sales Tool" (D442)	AVI_75212-17	402, 403, MD	R, SD
965	Email re "Illumina Competition" (D443)	AVI_65002	402, 403	R
966	Email re "Illumina Competitive MeetingFeb 3.doc"	AVI_75201-03	402, 403, MD	R, SD

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	(D444)			
967	Email re "Illumina Competitive Positioning" (D445)	AVI_75187-98	402, 403, MD	R, SD
968	Email re "Affy vs. Illumina" (D446)	AVI_55411-14	402, 403, MD	R, SD
969	Email re "Illumina Competitive Meeting Notes 021505.doc" (D447)	AVI_97964-69	402, 403, 802, MD	R, NH, HE, SD
970	Email re "Illumina Competitive Meeting--Friday 4th ATTY Client Privilege (D448)	AVI_97948-63	402, 403, MD	R, SD
971	Email re "Illumina Meeting 11 Mar--Action" (D449)	AVI_55401	402, 403	R
972	Email re "Illumina Competitive Meeting" (D450)	AVI_82355-67	402, 403, MD	R, SD
973	Competitive Positioning Session at WWSC--Focus on Illumina (D451)	AVI_73572-73	402, 403	R
974	Presentation titled "Competition--Sales and Support Meeting February 2005" (D452)	AVI_84566-78	402, 403	R
975	Illumina Internal Paper (D453)	AVI_6572-739	402, 403, ID	R, AV (AVI-065702-739)
976	Email re "Galileo for Pricing Committee" (D454)	AVI_62913	402, 403, 802	R, NH, HE
977	Email re "Perlegen/Galileo term sheet" (D455)	AVI_81635-36	402, 403, 802	R, NH, HE
978	Email re "10K S Pricing" (D456)	AVI_140902-03	402, 403, 802	R, NH, HE
979	Email re "Thoughts on ILMN announcement" (D457)	AVI_64319-22	402, 403, 802	R, NH, HE
980	Email re "USC" (D458)	AVI_82559-60	402, 403, 802	R, NH, HE
981	Email re "Welcome Trust Centre for Human Genetics" (D459)	AVI_15096-97	402, 403, 802	R, NH, HE
982	Illumina 5 th notice of deposition pursuant to 30b6 (D460)		402, 403	R
983	List of Lost Orders to Illumina (D461)	AVI_56491-93	402, 403	R
984	Presentation titled "SWOT Analysis" (D462)	AVI_73513-20	402, 403	R
985	Presentation on US Microarray Market in 2002	AVI_74703-24	402, 403, 802	R, NH, HE

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	(D463)			
986	Affymetrix document re "Illumina, Inc.: Internal Paper February 2004" (D464)	AVI_65702-39	402, 403	R
987	Email re "ParAllele" (D465)	AVI_59620-22	402, 403	R
988	Email re "ILMN--competitive update" (D466)	AVI_83608-12	402, 403	R
989	Email re "Illumina-Roche A/C privileged" (D467)	AVI_97842-44	402, 403	R
990	Declaration of Edwin Ching (D468)	AVI_145186-220		
991	Ching Privilege Log (D469)		402, 403	R
992	Notice of Subpoena of Sachleben (D471)		402, 403	R
993	Participants of SBH Workshop, Moscow (D472)	AVI_131354-59	402, 403, 802, 901	R, NH, HE, A
994	ORNL Foreign Trip Report, Sachleben (D473)	RAS78-85	402, 403, 802, 901	R, NH, HE, A
995	Report on the Sequencing by Hybridization Workshop, Moscow, USSR - "SBH - An Idea Whose Time has Probably Come" (D474)	IAFP598480-92	402, 403, 802, 901	R, NH, HE, A
996	Khrapko, et al "A method for DNA sequencing by hybridization with oligonucleotide matrix" (D475)	IAFP620747-620760	402, 403, 802	R, NH, HE
997	Consultant Agreement and Patent Agreement between Foote and Sachleben (D476)	RAS154-80	402, 403, 802	r, nh, he
998	'916 patent (D477)	RAS1-19	402, 403	R
999	Email from Schiffman to Leung (D478)	AVI_204621-25	402, 403	R
1000	Email from Ragusa to Rava (D479)	AVI_203859	105, 402, 403	AI, R
1001	Email from Forbes to Lewis (D480)	AVI_207486	402, 403	R
1002	Email from Lewis to Forbes (D481)	AVI_207077	402, 403	R
1003	Email from Lewis to Kole (D482)	AVI_208798-800	402, 403	R
1004	Email from Ragusa to Puccini (D483)	AVI_204163	402, 403	R
1005	Email from Ragusa to various individuals (D484)	AVI_204214	402, 403	R

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1006	Email from Ragusa to Siegel (D485)	AVI_204226	402, 403	R
1007	Email from Kole (D486)	AVI_207011	402, 403	R
1008	Email from Ragusa to various individuals (D487)	AVI_204056	402, 403	R
1009	Email from Forbes to Karas (D488)	AVI_208652-53	402, 403	R
1010	Email from Forbes to Lewis and Karas (D489)	AVI_208823-31	402, 403, MD	R, SD
1011	Document re "Historical Equivalent Chip Output & Additional Capacity Available by Quarter 2002 - 2005" (D490)	AVI_208721	402, 403	R
1012	Document re "Trended Aggregate Shipment Patterns and Seasonality" (D491)	AVI_208469-70	402, 403	R
1013	Email from Forbes to Lewis (D492)	AVI_208677-93	402, 403, MD	R, SD
1014	Email from Kaufman to Forbes (D493)	AVI_206988	402, 403	R
1015	Email from Cowell to Karas (D494)	AVI_206867-68	402, 403	R
1016	Email from Ragusa to Siegel (D495)	AVI_203969-70	402, 403	R
1017	Email from Ragusa to Karas (D496)	AVI_204044-46	402, 403	R
1018	Email from Gilbeau to Forbes (D497)	AVI_206888-89	402, 403	R
1019	Email from Verdoorn to Siegel (D498)	AVI_208806-07	402, 403	R
1020	Document re "Total Demand" (D499)	AVI_201784-808	402, 403	R
1021	Email from Karas to Forbes and Lewis (D500)	AVI_206899	402, 403	R
1022	Settlement Agreement with OGT, 3/23/01 (D501)	AVI_201356-77	105, 402, 403	AI, R
1023	Settlement Agreement with OGT, 5/04 (D503)	AVI_201378-86	105, 402, 403	AI, R
1024	License Agreement between Parallele and O-Link (D504)	AVI_201481-515	402, 403	R
1025	Email from Mortensen to Brawer (D506)	AVI_209080	402, 403	R
1026	Email from Sherr to Mortensen (D507)	AVI_209082-88	402, 403, MD	R, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1027	Email from Sherr to Brawer (D508)	AVI_209285-86	402, 403	R
1028	Email from Sherr to Blair (D509)	AVI_203264-73	402, 403, 802, MD	R, NH, HE, SD
1029	Email from Feuchtwang to McGarrigle (D510)	AVI_209376-77	402, 403, 802	R, NH, HE
1030	Email from Sherr to Killian and Murray (D512)	AVI_203274-79	402, 403, 802, MD	R, NH, HE, SD
1031	Email from Chait to Sherr (D514)	AVI_203041	402, 403, 802	R, NH, HE
1032	Email from Sherr to Pieken (D519)	AVI_203599-604	402, 403	R
1033	Email from Subash to Pieken (D520)	AVI_202789	402, 403, 802	R, NH, HE
1034	Email from Richey to Dolan (D521)	AVI_204277-278	402, 403, 802	R, NH, HE
1035	Email from Siegel to Williams (D522)	AVI_204357	402, 403, 802	R, NH, HE
1036	Email from Kendra to Dolan and Moore (D523)	AVI_204355	402, 403, 802	R, NH, HE
1037	Email from D'Errico to Dolan (D524)	AVI_204292	402, 403, 802	R, NH, HE
1038	Email from Williams to Siegel (D525)	AVI_204303-04	402, 403, 802	R, NH, HE
1039	Option Agreement Between the Regents of the University of California and Affymetrix, Inc. (D526)	AVI_201412-29	402, 403	R
1040	Fax cover sheet and letter from Kato to Dolan (D528)	AVI_203406-12	402, 403, 802, MD	R, NH, HE, SD
1041	Fax cover sheet and letter from Neumann to Dolan (D530)	AVI_204384-92	402, 403, 802, MD	R, NH, HE, SD
1042	Email from Horton to Sherr (D533)	AVI_203181-82	402, 403, 802	R, NH, HE
1043	Email from Wellis to Thompson and Lipshutz (D534)	AVI_204269-70	402, 403, 802	R, NH, HE
1044	License Agreement Term Sheet (D535)	AVI_205271-85	402, 403, 802	R, NH, HE
1045	Email from White to Sherr (D536)	AVI_202579	402, 403, 802	R, NH, HE
1046	Email from Sherr to Witney (D537)	AVI_202601	402, 403, 802	R, NH, HE
1047	Letter from Witney to Affymetrix (D538)	AVI_203548-51	402, 403, 802, MD	R, NH, HE, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1048	License Agreement between Affymetrix and PHRI, 1996-1997 (D539)	AVI_195717-49	402, 403	R
1049	Letter from Caulfield to Chait (D540)	AVI_210571-572		
1050	Letter from Caulfield to Johnson (D541)	AVI_210573-578		
1051	Phillip McGarrigle Declaration (D542)			
1052	Letter from McGarrigle re AB93 Comments (D543)		402, 403	R
1053	Powerpoint Presentation - Commercial IP Issues - Licensing, Prosecution and Litigation (D544)	AVI_210544-70	402, 403	R
1054	Email from Nussbacher to various individuals re: PE and Illumina exclusive in zip code genotyping (D545)	AVI_97479	402, 403	R
1055	Email from Caviar to various individuals re: Business Intelligence: Illumina Competitive Brief (D546)	AVI_91808	402, 403	R
1056	Email from McGarrigle to Crowley re: BI today 1pm PST Whitney - Illumina launches WG expression products; Agilent intros 8-pack slides (D547)	AVI_68351-60	402, 403	R
1057	Declaration of Michael Pirrung (Affy v. Synteni and Incyte) (D548)	IAFP5291-311	402, 403, 802	R, NH, HE
1058	U.S. Patent Application No. 10/098203 (D549)	AVI_731-1050	402, 403, 802, ID, MD	R, NH, HE, SD
1059	Email from Tsang to McGarrigle re: IDS (D550)	AVI_210585-210587	402, 403, 802	R, HE, NH
1060	Email from Tsang to McGarrigle re: Visit to PTO (D551)	AVI_210541	402, 403, 802	R, NH, HE
1061	Email from Tsang to McGarrigle re: Trip to the PTO (D552)	AVI_210540	402, 403, 802	R, NH, HE
1062	Exhibit seized during the deposition about which there is a pending motion (D553)	AVI_68483-85	PRIV, 402, 403	R, PI
1063	U.S. Patent Application No. 09/585659 (D554)	AVI_1341-1863		

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1064	Office communication re: U.S. Patent App. No. 10/125,530 (D555)		402, 403, 802	R, NH, HE
1065	Office communication re: U.S. Patent App. No. 10/125,428 (D556)		402, 403, 802	R, NH, HE
1066	U.S. Patent Application No. 09/907196 (D557)	AVI_1051-340		
1067	U.S. Patent No. 6,103,463 (D558)	IAFP13118-13224	402, 403, 802, MD	R, NH, HE, SD
1068	Fax from Norviel to McFarlane re: schedule of conference call between Hone and Norviel and McGarrigle (D559)	PHRI7547	402, 403	R
1069	Email from Kramer to Sherr re: PHRI license agreement (D560)	PHRI1579	402, 403, 802	R, NH, HE
1070	Sutherland Expert Report (D561)		802	NH
1071	Curriculum Vitae of John D. Sutherland (D562)			
1072	Sutherland Expert Report Materials Considered (D563)		402, 403, 802	R, NH, HE, SU
1073	Declaration of Professor John Sutherland. EP 0 619321 (D564)	IAFP5999-6013	402, 403, 802	R, NH, HE
1074	Declaration of Professor John Sutherland. EP 0 834575 (D565)	AVI_214018-23	402, 403, 802	R, NH, HE
1075	Declaration of Professor John Sutherland. Japanese Patent App. No. (2-508966) (D566)		402, 403, 802	R, NH, HE
1076	U.S. Patent Application No. 07/362,901 (D567)	IAFP15081-140	402, 403	R
1077	Schulhof, et al. "The final deprotection step in oligonucleotide synthesis is reduced to a mild and rapid ammonia treatment by using labile base-protecting groups." (D568)			
1078	Hayakawa, et al. "Allylic protecting groups in solid-phase DNA synthesis." (D569)			
1079	Hayakawa, et al. "The Allylic Protection Method in	IAFP6036-41		

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	Solid-Phase Oligonucleotide Synthesis. An Efficient Preparation of Solid-Anchored DNA Oligomers." (D570)			
1080	Amit, et al. "Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis..." (D571)	IAFP653834-39		
1081	Amit, et al. "Photosensitive Protecting Groups." (D572)	IAFP4376-78		
1082	Cama, et al. "Total Synthesis of Thienamycin Analogues 1. Synthesis of the Thienamycin Nucleus and dl-Descysteaminythienamycin..." (D573)			
1083	U.S. Patent No. 4,086,254 (D574)	AVI_213912-19		
1084	Pillai, "Photoremovable Protecting Groups in Organic Synthesis (D575) (D575)	IAFP4748-74		
1085	Pillai, "Photolytic Deprotection and Activation of Functional Groups." (D576)	AVI_214037-135		
1086	Pease et al, "Light-generated Oligonucleotide Arrays for Rapid DNA Sequence Analysis" (D577)	IAFP4709-13	402, 403	R
1087	Figures of NV, NVOC, MeROC (D578)		402, 403, 802	R, NH, HE
1088	Michael Pirrung Deposition Transcript - 1/16/06 (D579)		402, 403, 802	R, HE
1089	Infinium Report "Affymetrix: Not Out Of The Woods Yet" (D581)	AVI_210743-71		
1090	Bear Stearns Report "Affymetrix: Initiating Coverage of AFFX with an Outperform Rating and \$25 Price Target" (D582)	AVI_213185-209		
1091	Bear Stearns Report "Illumina: Initiating Coverage of ILMN with a Peer Perform Rating and \$38 Price Target" (D583)	AVI_212824-47		
1092	Price Chart (D585)	AVI_209017	MP	R

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1093	Affymetrix Internal Finance Package (December 31, 2005) (D586)	AVI_210396-471		
1094	Expert Report of Dr. Kevin Struhl; CV; Materials Considered (D587)		802, MD	HE, NH, SD, SU
1095	Cases as Expert Witness (D588)		402, 403	R
1096	"Sandwich Assay" Figure (D589)		402, 403, 802, 901	R, NH, A, HE
1097	Hand drawn figure of Infringe Claim 1 of '531 Patent (D590)		402, 403, 802, 901	R, NH, A, HE
1098	Hand drawn figure of Infringe Claim 3 of '531 Patent (D591)		402, 403, 802, 901	R, NH, A, HE
1099	Hand drawn figure 2 of Infringe Claim 3 of '531 Patent (D592)		402, 403, 802, 901	R, NH, A, HE
1100	Biochip Array Technologies: Fabrication & Applications - Drmanac, "Sequencing by Hybridization (SBH) on Super Chips" (D593)	IAFP643753-71	402, 403, 802, 901	R, NH, HE, A
1101	Hand drawn figure of Green Bead and Red Bead (D594)		402, 403, 802, 901	R, NH, A, HE
1102	Hand drawn figure of Small Bead and Big Bead (D595)		402, 403, 802, 901	R, NH, A, HE
1103	Hand drawn figure of Bead in Position 1 and Bead in Position 2 (D596)		402, 403, 802, 901	R, NH, A, HE
1104	Hand drawn figure of Oligonucleotide coding Sequence 1 and Oligonucleotide coding Sequence 2 (D597)		402, 403, 802, 901	R, NH, HE, A
1105	Tora, "A Unified nomenclature for TATA box binding protein (TBP)-associated factors (TAFs) involved in RNA polymerase II transcription" (D598)		402, 403, 802	R, NH, HE
1106	Koster CV (D600)			

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1107	Koster Materials Considered (D601)		402, 403, 802	SU, R, NH, HE
1108	Exhibit C - Scientia Yugoslavica - Title Page and Contents (D602)		402, 403, 802	R, NH, HE
1109	Markman Order (D604)			
1110	Markman Opinion (D605)			
1111	WO 89/10977(D606)	IAFP656538-68	402, 403, 802	R, NH, HE
1112	Hand drawn figure (D611)		402, 403, 802, 901	R, NH, HE, A
1113	U.S. Patent No. 5,143,854 (D612)	IAFP07295-7334		
1114	SBH and The Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes (D613)	IAFP 643941-643962	402, 403, 802	R, NH, HE
1115				
1116	U.S. Patent No. 5,700,637 (D615)	IAFP 655740-655750	402, 403	R
1117	Email from Czarnik to Chee & Stuelpnagel re T.C. having mood swings (Czarnik001)	C0007	402, 403, 802, NP	R, NH, HE, AV
1118	Appellant's Appendix vol 2 of 2 from Czarnik v. Illumina (Czarnik002)		402, 403, 802, NP	R, NH, HE, AV
1119	Illumina's Notice of Subpoena of Gene Logic (Gene Logic 1)		402, 403	R
1120	Amended and Restated Agreement between Gene Logic and Affymetrix (Gene Logic 2)	AVI_199638-701	402, 403	R
1121	Presentation re Affy Relationship (Gene Logic 3)	GL1-06	402, 403, 802, 901	R, NH, HE, A
1122	Affy Task Force Meeting Minutes (Gene Logic 4)	GL121-22	402, 403, 802, 901	R, NH, HE, A
1123	Affymetrix 2005 Negotiation Playbook (Gene Logic 5)	GL10-24	402, 403, 802, 901	R, NH, HE, A
1124	Affymetrix 2006 Negotiation Playbook (Gene Logic 6)	GL34-38	402, 403, 802, 901	R, NH, HE, A

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1125	Affy Dec 14 Contract Review Meeting (Dec. 20, 2005) (Gene Logic 7)	GL75-77	402, 403, 802, 901	R, NH, HE, A
1126	Afx '06 Agreement Highlights for Operations Team (Gene Logic 8)	GL79-80	402, 403, 802, 901	R, NH, HE, A
1127	Gene Logic and Illumina email chain (Gene Logic 9)	IAFP611127-28	402, 403, 802	R, NH, HE
1128	1/23/04 Email to Dr. Hertz from Mr. Keser (Gene Logic 10)	GL195-201	402, 403, 802, 901	R, NH, HE, A
1129	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '432 Patent		402, 403	R
1130				
1131				
1132	Wolf Trap Genome Sequencing Conference	IAFP597889-95	402, 403, 802, 901, MD, ID	R, NH, HE, A, SD
1133				
1134	Jacobson letter to Crkvenjakov	IAFP598050-53	402, 403, 802, 901, MD	R, HE, NH, A, SD
1135				
1136	US Patent 5,541,061	AVI_38905-23	402, 403	R
1137	US Patent 5,639,603	IAFP653700-653732	402, 403	R
1138				
1139	US Patent 4,046,750	IAFP65028-36	402, 403	R
1140	Declaration of Dr. Hubert Koster in Support of Affymetrix's Statement of Disputed Material Facts in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '432 Patent		402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1141	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Unenforceability of the '243 Patent		402, 403	R
1142	Civil Docket for Case # 1:98-cv-00006			
1143	Form 10-K405 (filed 3/31/1999)	AVI_47571-650		
1144	Form 10-K405 (filed 3/30/2001)	AVI_119639-733		
1145	Civil Docket for Case # 1:98-cv-00520			
1146	Civil Docket for Case # 3:98-cv-4507			
1147	Civil Docket for Case # 3:98-cv-4508			
1148				
1149	McGarrigle Statement re Fodor Application	IAFP2185-89	402, 403, MD	R, SD
1150	Liebeschuetz Submission re Pirrung Application	IAFP19344-47	402, 403	R
1151	Liebeschuetz Amendments to Notice of Allowance re Fodor Application	IAFP18515-17	402, 403	R
1152	Information Disclosure Statement	IAFP17999-8000	402, 403	R
1153	Initial Disclosure of Prior Art Pursuant to 16-7	IAFP17960-74	105, 402, 403	AI, R
1154				
1155	Pirrung Document (Ex. P to '243 Summary Judgment Memorandum)		402, 403, 802	R, NH, HE
1156	Amendment and Response re Fodor Application	IAFP18446-50	402, 403	R
1157	News Release: Affymetrix Provides Update on Litigation Against Incyte		NP, ID	AV
1158	Letter from Collier to Gross re licensing files, manufacturing yield/capacity issue and McCarrigle deposition date		402, 403, 802, 901	R. NH, HE, A
1159	Letter from Gross to Collier re licensing files, Illumina's production of licenses, Affymetrix		402, 403, 802, 901	R. NH, HE, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	internal documents, proposed meeting and McCarrigle deposition date			
1160	Argonne document [Format 3 SBH Super Chip]	ARG986-1036, 1038	402, 403, 802, MD	R, NH, HE, SD
1161	D. Barker et al. "Self-Assembled Random Arrays"	IAFP532343-53		
1162	D. Barker's ILMN presentation on GT & GEX showing beadchip and well formation	IAFP546077-6108	402, 403, 802	R, NH, HE
1163				
1164	Restriction Requirement - Chee Application	IAFP346-49	402, 403	R
1165	Response to Restriction Requirement - Chee Application	IAFP345-55	402, 403	R
1166	Supplemental Amendment - Chee Application	IAFP494-508	402, 403	R
1167	Petition to Correct Inventorship - Chee Application	IAFP598-99	402, 403	R
1168	Form 10-K - Illumina Inc (3/6/2006)			
1169	Securities and exchange Commission Form 10-K - Illumina Inc	IAFP20791-803		
1170				
1171				
1172	Stuelpnagel Declaration		ID, 105	AI
1173	Illumina: Atlas Development Phase Design Verification Testing Peer Technology Review Pre-read	IAFP590053-107		
1174	SEC Form 10-K - Affymetrix - Annual Report for fiscal year ended 12/31/05	AVI_213606		
1175	Form 8-K - Affymetrix filed 10/22/2003	AVI_126397-407	MP	R
1176	US SEC Form 10-K - Affymetrix - Annual Report	AVI_48118-20		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	for fiscal year ended 12/31/2002			
1177	Market Assessment	IAFP541086-87	402, 403, MP	R
1178	Illumina Catalog List 2005	IAFP11913-15	MP	R
1179	Competitor Overview - Q3, '04	AVI_65550-52	402, 403	R
1180	Illumina Product Technology claim Chart	AVI_55313-14	ID, 105, 402, 403	AI, R
1181	Email from Cowden to Raimond re: Proof is in publication	AVI_57962-63	402, 403	R
1182	Email from Fergus re: ILMN earnings - details	AVI_58733-36	402, 403	R
1183	US SEC Form 10-K - Illumina		ID	
1184				
1185	Email from Fergus re: MS Consortium - Duke Members	AVI_58376-80	402, 403, 802	R, NH, HE
1186	Commercial Monthly Report - June 2004	AVI_84588-49	402, 403, 802	R, NH, HE
1187	Chart of Illumina's purchases	AVI_82349	402, 403, 802, ID	R, NH, HE
1188	Email from Raimond re: Parallel pricing	AVI_092039-092045	402, 403, 802	R, NH, HE
1189	CIDR Meeting notes from Jan. 30, 2002 & Follow-up Affy internal meeting from Feb. 4, 2003	AVI_62268-73	402, 403, 802	R, NH, HE
1190	Email from Fergus re: FWD: Illumina	AVI_55929	402, 403, 802	R, NH, HE
1191	Email from Raimond re: holding off ILMN - HELP	AVI_53898	402, 403, 802	R, NH, HE
1192	Email from Lankard to Siegel re: SR's	AVI_82089	402, 403, 802, ID, MP	R, NH, HE
1193				
1194	Illumina Competitive Meeting - Feb. 3	AVI_55289-90	402, 403	R
1195				
1196	Email from Orpin re: NIH award	IAFP602431-32	402, 403, 802	R, NH, HE
1197	Affymetrix Guidance Announcement		ID, NP	AV

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1198	Email from Yap re: Illumina 100K SR	AVI_63653-54	402, 403, 802	R, NH, HE
1199	Illumina News Release - Illumina Initiates Shipment of Whole-Genome Genotyping Beadchips	IAFP496718-6720	402, 403, 802	R, NH, HE
1200	Affymetrix Market Perform (3/7/2006)	IAFP6455432-5437	402, 403, 802	R, NH, HE
1201	Email from Raimond re: Parallele Press Release is Out	AVI_57995- 97	402, 403	R
1202	Illumina News Release - Illumina Reports Financial Results for 3 rd Quarter 2005		ID, NP	AV
1203				
1204				
1205	Game Time - Affymetrix Negotiation Playbook	GL 34	402, 403, 802, 901	R, NH, HE, A
1206	Game Time - Affymetrix Negotiation Playbook	GL 37	402, 403, 802, 901	R, NH, HE, A
1207				
1208	Email from Lankard re: the comp- Joe Gray talking with Illumina	AVI 056451-53	402, 403, 802	R, NH, HE
1209	BI Advisory Board - January 2004	AVI_65133-37	402, 403	R
1210	Email from Kain re: Axon contact	IAFP535717-19	402, 403, 802	R, NH, HE
1211	Discussion Materials for the Scanner Project, 2/2005	IAFP535227-31	402, 403, 802	R, NH, HE
1212				
1213	Andrew Rosenthal, <u>Bush Encounters the Supermarket, Amazed</u> , N.Y. Times, Feb. 5, 1992, at A1	IAFP644440-42	402, 403, 802	R, HE, NH
1214	April 1978 MAD Magazine	IAFP643791-830	402, 403, 802	R, HE, NH
1215	<i>Bars in the Lab: Two New Technologies Join Forces</i> , Bar Code News, March/April 1983	IAFP644436-39	402, 403, 802	R, HE, NH
1216	Benjamin Nelson, <u>Punched Cards to Bar Codes</u> 55 (Helmets Publishing 1997)	Not Produced (Excerpts Included)	ID, NP, 402, 403, 802	AV, R, HE, NH

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1217	Bruce Smith, <i>Bar Code: The Data Entry Alternative</i> , Bar Code News, March 1982, at 1-2	IAFP644434-35	402, 403, 802	R, HE, NH
1218				
1219	Craig K Harmon & Russ Adams, R., <u>Reading Between the Lines</u> 197-205 (North American Technology, Inc. 1984)	Not Produced (Excerpts Included)	ID, NP, 402, 403, 802	AV, R, HE, NH
1220				
1221				
1222				
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1226				
1227	U.S. Patent No. 5,358,691 (Clark)		NP, 402, 403	R, AV
1228	Adams CV		402, 403, 802	R, NH, HE
1229	MPEP		NP, 402, 403, ID, MD	AV, R, SD
1230	37 CFR s1.1-1.318		NP, 402, 403, ID, MD	AV, R, SD
1231	US 2,612,994 (Woodland)		402, 403, NP	R, AV
1232	Human Genome Conference Agenda, San Diego, 1990	IAFP 598078-080	402, 403, 802	R, HE, NH
1233	"Help Needed at Central Supply, STAT: Bar Codes Ease Growing Pains," March/April 1983, Bar Code News		NP, ID	AV
1234	"Sterile Bar Codes: Guiding Production for a Medical Manufacturer," March/April 1983, Bar Code News		NP, ID	AV
1235	"Upgrading Blood Banks: Checking Out The		NP, ID	AV

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	Library," March/April 1983, Bar Code News			
1236	"Health Industry Moves Quickly to Adopt Uniform Bar Coding," Sept/Oct 1983, Bar Code News		NP, ID	AV
1237	Sept/Oct 1983, Bar Code News 55		NP, ID	AV
1238	"Health Industry Bar Code (HIBC) Task Force Publishes Final Recommendations," Nov/Dec 1983, Bar Code News		NP, ID	AV
1239	"Prescription For Hospital Fixed Assets Management," July/August 1984, Bar Code News		NP, ID	AV
1240	"New Standards: Bar Code Markings For Healthcare," July/August 1984, Bar Code News		NP, ID	AV
1241	"How To Cure Medical Supply Chaos," July/August 1984, Bar Code News		NP, ID	AV
1242	"Health Care Bar Codes: Description or Identifiers," March/April 1985, Bar Code News		NP, ID	AV
1243	"The Bees' Knees in Bar Code," October 1988, ID Systems 21-26		NP, ID	AV
1244				
1245				
1246				
1247				
1248	U.S. Patent No. 5,281,540 (Merkh)	IAFP659442-9473	402, 403	R
1249	U.S. Patent No. 5,348,855 (Dattagupta et al.)	IAFP 653471-653489	402, 403	R
1250				
1251	U.S. Patent No. 5, 543,061 (Baskis)	IAFP 655705-655723	402, 403	R
1252				
1253				

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1254				
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1257				
1258	Prosecution Histories of U.S. Application No.09/585,659 (Fodor), 5/15/2001 Office Action	IAFP 1100-10	402, 403, 802	R, NH, HE
1259	Prosecution Histories of U.S. Application No.09/585,659 (Fodor), 9/17/2001 Office Action	IAFP 1143-56	402, 403, 802	R, NH, HE
1260	Prosecution Histories of U.S. Application No. 09/907,196 (Besemer), 1/16/2002 Amendment	IAFP 1503-14	402, 403, 802	R, NH, HE
1261	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 2/14/05 Office Action Summary	IAFP 648134-46	402, 403, 802	R, NH, HE
1262				
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1275	Drmanac et al. Laboratory Methods, Reliable Hybridization of Oligonucleotides as Short as Six Nucleotides. DNA and Cell Biology 1990;9	IAFP 595861-68	402, 403, 802	R, NH, HE
1276	Drmanac et al. SBH and the Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes," In Lim, H. and Fickett, J. W., Cantor, C.R. and Robbins, R.J., editors, The 2 nd International Conference on Bioinformatics, Supercomputing and Complex Genome Analysis, Singapore, World Scientific 1992:121-134	IAFP 596030-43	402, 403, 802	R, NH, HE
1277				
1278				
1279				
1280	Hiraoka et al. The NDA3 Gene of Fission Yeast Encodes B-Tubulin: A Cold-Sensitive nda3 Mutation Reversibly Blocks Spindle Formation and Chromosome Movement in Mitosis. Cell 1984;39:349-358	IAFP 654774-654783	402, 403, 802	R, NH, HE
1281	Hiraoka et al. The use of charge-coupled device for quantitative optical microscopy of biological structures. Science 1987;238:36-41	IAFP 653981-653988	402, 403, 802	R, NH, HE
1282	Hiraoka et al. The use of a charge-coupled device for quantitative optical microscopy of biological structures. Abstract from PubMed 1987	IAFP 654348	402, 403, 802	R, NH, HE
1283	Khrapko et al. An oligonucleotide hybridization approach to DNA sequencing. FEBS Lett 1989;256:118-122	IAFP 654603-654607	402, 403, 802	R, NH, HE
1284	Lysov YP, Florentev VL, Khorlin AA, Khrapko KR, Shik VV, Mirzabekov AD. A new method for determining the DNA nucleotide sequence by hybridization with oligonucleotides. Dokl Biochem	IAFP 654733-654735	402, 403, 802	R, NH, HE

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	1989; 436-8 (Russian original Dolk Biochem 1988;303: 355-452)			
1285	Shitara et al. Advantage of cocktail-use of two anti-tumor monoclonal antibodies, KM-93 and KM-231, in serum diagnosis of cancer. Anticancer Res. 1989;9:999-1004	IAFP 654969-654974	402, 403, 802	R, NH, HE
1286				
1287	"Affymetrix and Hyseq Settle All Patent Litigation" Affymetrix News Release - 10/25/01	IAFP 656342-656344	402, 403	R
1288	All Cited Documents from Affymetrix's Supplemental Response to Illumina's First Set of Interrogatories No. 8 (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)		ID, MD	SD
1289	Affymetrix Counter-Statement in Response to Illumina's Motion for Summary Judgment of Invalidity of the Asserted Claims of the '531 Patent (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)		402, 403	R
1290	Declaration of Robin A. Felder, Ph.D. In Support of the Opposition of Affymetrix, Inc.'s Motion for Summary Judgment of Invalidity of the Asserted Claims of the '531 Patent (<i>Affymetrix v. Illumina</i> , Inc. C.A. No. 04-901)		402, 403, 802	R, NH, HE
1291	Docket from <i>Affymetrix v. Hyseq, Inc.</i> 99-cv-21163 (NDCA)	IAFP 657710-41		
1292	Docket from <i>Affymetrix v. Synteni, Inc. et al.</i> 99-cv-21164 (NDCA)	IAFP 657742-825		
1293	Opposition by Synteni and Incyte to Motion to Strike and Dismiss Certain Allegations of Inequitable Conduct (<i>Affymetrix v. Synteni, Inc. et al.</i> 99-cv-21164 (NDCA))	IAFP 657458-86	402, 403, 802	R, NH, HE
1294	Order Construing Claims of U.S. Patents Nos. 5,445,934; 5,744,305; 5,800,992; and 5,795,716	AFF-HYS017028-57		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	<i>(Affymetrix v. Syten, Inc. et al. 99-cv-21164 (NDCA))</i>			
1295	ARG 000986-1036		402, 403, 802, 901	R, NH, HE, A
1296				
1297				
1298	<i>OGT v. Affymetrix</i>	IAFP6607-27	802, 402, 403, MD, ID	NH, HE, R, SD
1299				
1300	DOE Final Technical Progress Report	IAFP572351-68	402, 403, 802, 901	R, NH, HE, A
1301				
1302	Letter relating to File #26 (May 7,1990)	AVI_201301-14	402, ID, 403, MD	R, SD
1303				
1304				
1305				
1306	Billing Records (Dec. 5, 1990)	AVI_134228-29		
1307				
1308				
1309	Request for Inference Against '531	ARG0001192-96	402, 403, 802	R, NH, HE
1310				
1311	'243 Information Disclosure Statement	IAFP2228, IAFP2232	402, 403, MP	R
1312	'432 Information Disclosure Statement	IAFP1123, IAFP1127	402, 403, MP	R
1313	Prosecution Histories of U.S. Application No.09/585,659 (Fodor)	IAFP 710-1240	402, 403	R
1314	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 2/14/05 Office Action Summary	IAFP 648134-146	402, 403, 802	R, NH, HE

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1315	Prosecution Histories of U.S. Application No.10/125,428 (Fodor), 3/31/06 Office Action (Rejection)	DX 556	402, 403, 802	R, NH, HE
1316	Prosecution Histories of U.S. Application No.10/125,530 (Fodor), 5/19/04 Office Action Summary	IAFP 651859-651867	402, 403, 802	R, NH, HE
1317				
1318	Prosecution Histories of U.S. Application No.10/125,530 (Fodor), 3/24/06 Office Action Summary	DX 555	402, 403, 802	R, NH, HE
1319	Phimister B. Going global. Nature Genet 1999;21:1	IAFP 654808	402, 403, 802	R, NH, HE
1320	Bauman JG, Wiegant J, Borst P, van Duijn P. A new method for fluorescence microscopical localization of specific DNA sequences by in situ hybridization of fluorochrome labelled RNA. Exp Cell Res 1980;128:485-90	IAFP 653863-653868	402, 403, 802	R, NH, HE
1321	Smith LM, Fung S, Hunkapiller MW, Hunkapiller TJ, Hood LE. The synthesis of oligonucleotides containing an aliphatic amino group at the 5' terminus: synthesis of fluorescent DNA primers for use in DNA sequence analysis. Nucleic Acids Res 1985;13:2399-2412	IAFP 654989-655002	402, 403, 802	R, NH, HE
1322	Haralambidis J, Chai M, Tregear GW. Preparation of base-modified nucleosides suitable for non-radioactive label attachment and their incorporation into synthetic oligodeoxyribonucleotides. Nucleic Acids Res 1987;15:4857-76	IAFP 654313-654332	402, 403, 802	R, NH, HE
1323	Rost FWD. Quantitative fluorescence microscopy. Cambridge:Cambridge University Press, chapters 15 and 16, 1991	IAFP 654899-654917 IAFP 654918-654934	402, 403, 802	R, NH, HE

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1324	Shack RV, Bartels PH, Buchroeder RA, Shoemaker RL, Hillman DW, Vukobratovich D. Design for a fast fluorescent laser scanning microscope. Anal Quant Cytol Histol 1987;9:509-20	IAFP 654957-654968	402, 403, 802	R, NH, HE
1325	Marinkovich VA. In vitro method for determining allergic hypersensitivity. United States Patent 1977: 4,031,197	IAFP 655119-655126	402, 403, 802	R, NH, HE
1326	Wang SP, Grayston JT. Immunologic relationship between genital TRIC, lymphogranuloma venereum, and related organisms in a new microtiter indirect immunofluorescence test. Am J Ophthalmol 1970; 70:367-74	IAFP 656331-656338	402, 403, 802	R, NH, HE
1327	Pace SJ. Integrated array of electrochemical sensors. United States Patent 1980:4 225 410	IAFP 656037-656053	402, 403, 802	R, NH, HE
1328	Gergen JP, Stern RH, Wesink PC. Filter replicas and permanent collections of recombinant DNA plasmids. Nucleic Acids Res 1979;7:2115-36	IAFP 654237-654258	402, 403, 802	R, NH, HE
1329	Dattagupta N, Raben DU, Huguenal ED. Rapid detection of nucleic acid sequences in a sample by labeling the sample. European Patent 1987:235 726	IAFP 654087-654115	402, 403, 802	R, NH, HE
1330	Augenlicht L. Method for detecting pathological conditions. United States Patent 1991: 4 981 783	IAFP 655387-655403	402, 403, 802	R, NH, HE
1331	Wolf SF, Haines L, Fisch J, Kremsky JN, Dougherty JP, Jacobs K. Rapid hybridization kinetics of DNA attached to submicron latex particles. Nucleic Acids Res 1987;15:2911-26	IAFP 657442-657457	402, 403, 802	R, NH, HE
1332	Jablonski E, De Luca M. Immobilization of bacterial luciferase and FMN reductase on glass rods. PNAS 1976;73:3848-51	IAFP 654363-654366	402, 403, 802	R, NH, HE
1333	Scillian JJ, McHugh TM, Busch MP, Tam M, Fulwyler MJ, Chien DY et al. Early detection of antibodies against rDNA-produced HIV proteins	IAFP 654949-654956	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	with a flow cytometric assay. Blood 1989;73:2041-8			
1334	Streefkerk JG, Kors N, Boden D. Principle of a reaction for simultaneous detection of various antibodies using coloured antigen-coupled agarose beads. Protides Biol Fluids 1976; 24:811-4	IAFP 655032-655035	402, 403, 802	R, NH, HE
1335	Schick LA, Carpenter SK. Specific binding-adsorbent assay method and test means. United States Patent 1979:4 145 406	IAFP 655136-65552	402, 403, 802	R, NH, HE
1336	Gingeras TR, Ghosh SS, Davis GR, Kwoh DY, Musso GF. Nucleic acid probe assay methods and compositions. WIPO WO 88/01302	IAFP 656422-656477	402, 403, 802	R, NH, HE
1337	Kwoh DY, Davis GR, Whitfield KM, Chappelle HL, DiMichele LJ, Gingeras TR. Transcription-based amplification system and detection of amplified human immunodeficiency virus type 1 with a bead-based sandwich hybridization format. PNAS 1989;86:1173-7	IAFP 654651-654655	402, 403, 802	R, NH, HE
1338	Rembaum A, Gupta A, Volksen W. Cross-linked polyvinyl pyridine coated glass particle catalyst support and aqueous composition or polyvinyl pyridine adducted microspheres. United States Patent 1981:4 259 223	IAFP 656054-656061	402, 403, 802	R, NH, HE
1339				
1340	Southern E, Maskos U. Support-bound oligonucleotides. United States Patent 1995:5 436 327	IAFP 655685-655690	402, 403, 802	R, NH, HE
1341	Khorana, H.G. et al., "A New Approach to the Synthesis of Polynucleotides," Chemistry and Industry, 1523 (1956)	IAFP 654602	402, 403, 802	R, NH, HE
1342	Britten RJ. Complementary strand association between nucleic acids and nucleic acid gels Science	IAFP 653961-63	402, 403, 802	R, NH, HE

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	1963;142:963-5			
1343	Gilham PT. Immobilized polynucleotides and nucleic acids. Adv Exp Med Biol 1974;42:173-85	IAFP 654275-87	402, 403, 802	R, NH, HE
1344	Rembaum A. Polyglutaraldehyde synthesis and protein bonding trates. United States Patent 1977:4 046 750	IAFP 656028-36	402, 403, 802	R, NH, HE
1345	Dattagupta N, Crothers DM. Coupling of nucleic acids to solid support by photochemical methods. United States Patent 1977:4 542 102	IAFP 655182-87	402, 403, 802	R, NH, HE
1346	Kremsky JN, Wooters JL, Dougherty JP, Meyers RE, Collins M, Brown EL. Immobilization of DNA via oligonucleotides containing an aldehyde or carboxylic acid group at the 5' terminus Nucleic Acids Res 1987;15:2891-909	IAFP 654632-50	402, 403, 802	R, NH, HE
1347	Hultman T, Stahl S, Homes E, Uhlén M Direct solid phase sequencing of genomic and plasmid DNA using magnetic beads as solid support. Nucleic Acids Res. 1989;17:4937-45	IAFP 654349-58	402, 403, 802	R, NH, HE
1348	Wahlberg J, Lundeberg J, Hultman T, Holmberg M, Uhlén M. Rapid detection and sequencing of specific in vitro amplified DNA sequences using solid phase methods. Molecular and Cellular Probes 1990;4:285-297	IAFP 656303-15	402, 403, 802	R, NH, HE
1349	http://marketing.appliedbiosystems.com (see 25 years heritage timeline)	IAFP 656351-58	402, 403, 802, 701	R, HE, NH, O
1350				
1351	Arnold LJ Jr. Oligonucleotide polymeric support system. WIPO 1985:WO 85/01051	IAFP 656372-421	402, 403, 802	R, NH, HE
1352	Beattie KL, Logsdon NJ, Anderson RS et al. Biotechnol and Appl Biochem 1988;10:510-21	IAFP 653869-80	402, 403, 802	R, NH, HE
1353	Maiolini R, Bagrel A, Chavance C, Krebs B,	IAFP 654736-40	402, 403, 802	R, NH, HE

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	Herbeth B, Masseyeff R. Study of an enzyme immunoassay kit for carcinoembryonic antigen. Clin Chem 1980;26:1718-22			
1354	Gundersen SG, Haagensen I, Jonassen TO, Figenschau KJ, de Jonge N, Deelder AM. Magnetic bead antigen capture enzyme-linked immunoassay in microtitre trays for rapid detection of schistosomal circulating anodic antigen. J Immunol Methods 1992;148:1-8	IAFP 654305-12	402, 403, 802	R, NH, HE
1355	Inouye S, Hondo R. Microplate hybridization of amplified viral DNA segment. J Clin Microbiol 1990;28:1469-72	IAFP 654359-62	402, 403, 802	R, NH, HE
1356	Soini EJ. Biospecific multianalyte assay method. United States Patent 1991:5 028 545	IAFP 655413-18	402, 403	R
1357	"Affymetrix infringed Ed Southern's microarray patent" Biotech News, 2000	IAFP 653831-33; IAFP 656346-49	402, 403, 802, MD	R, NH, HE, SD
1358				
1359	Rembaum A. Polyglutaraldehyde synthesis and protein bonding substrates. United States Patent 1981:4 267 234	IAFP 656062-77	402, 403	R
1360	de Jaeger et al. Immunoassay using colorable latex particles. United States Patent 1989:4 837 168	IAFP 656093-106	402, 403	R
1361	www.luminex.com	IAFP 656360	402, 403, 802	R, NH, HE
1362	Michael KL, Taylor LC, Schultz SL, Walt DR. Randomly ordered addressable high-density optical sensor arrays. Anal Chem. 1998;70:1242-8	IAFP 654759-65	402, 403, 802	R, NH, HE
1363	www.illumina.com	IAFP 656359	402, 403, 802	R, NH, HE
1364	www.affymetrix.com/technology/chemistry.affx	IAFP 656345	402, 403	R
1365	Larin Z, Fricker MD, Mayer E, Ishikawa-Brush Y, Southern EM. Fluorescence in situ hybridization of	IAFP 654656-59	402, 403, 802	R, NH, HE

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	multiple probes on a single microscope slide. Nucleic Acids Res 1994;22:3689-92			
1366	Chang TW. Immunoassay device enclosing matrixes of antibody spots for cell determinations. United States Patent 1989:4,829,010	IAFP 656087-92	402, 403	R
1367	Chetverin AB, Kramer FR. Novel oligonucleotide arrays and their use for sorting, isolating, sequencing, and manipulating nucleic acids. WIPO 1993:WO 93/17126	IAFP 656773-76	402, 403, 802	R, NH, HE
1368	Dandliker WB, Barr HS, Katzenstein HS, Watson KR. Fluorometer. United States Patent 1989:4 877 965	IAFP 655308-30	402, 403, 802	R, NH, HE
1369	Glazer AN, Peck K, Mathies RA. A stable double-stranded DNA-ethidium homodimer complex: application to picogram fluorescence detection of DNA in agarose gels. Proc Natl Acad Sci U S A. 1990;87:3851-5; Mathies at 50:1-8	IAFP 655027-31	402, 403, 802	R, NH, HE
1370	Caldwell KD, Chu T-J, Pitt; WG. DNA sequencing using fluorescence background electroblotting membrane. United States Patent 1992:5,112,736	IAFP 653421-33	402, 403	R
1371	Hiraoka Y, Sedat JW, Agard DA. The use of a charge-coupled device for quantitative optical microscopy with biological structures. Science 1987;238:36	IAFP 653981-88	402, 403, 802	R, NH, HE
1372	Arndt-Jovin DJ, Robert-Nicoud M, Baurschmidt P, Jovin TM. Immunofluorescence localization of Z-DNA in chromosomes: quantitation by scanning microphotometry and computer-assisted image analysis. J Cell Biol. 1985;101:1422-33	IAFP 653840-51	402, 403, 802	R, NH, HE
1373	Ploem JS. New instrumentation for sensitive image analysis of fluorescence in cells and tissues. In: Applications of fluorescence in the biomedical sciences, Eds Taylor DL, Wagoner AS, Lanni F,	IAFP 654809-20	402, 403, 802	R, NH, HE

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	Murphy RF, Birge RR. New York:AR Liss, 1986: 289-300			
1374	Toda T, Yamamoto M, Yanagida M. Sequential alterations in the nuclear chromatin region during mitosis of the fission yeast <i>Schizosaccharomyces pombe</i> : video fluorescence microscopy of synchronously growing wild-type and cold-sensitive cdc mutants by using a DNA-binding fluorescent probe. J Cell Sci. 1981; 52:271-87	IAFP 655069-86	402, 403, 802	R, NH, HE
1375	Bright GR, Taylor DL. Imaging at low light level in fluorescence microscopy. Applications of fluorescence in the biomedical sciences, Eds Taylor DL, Wagoner AS, Lanni F, Murphy RF, Birge RR. New York:AR Liss, 1986: 257-88	IAFP 653929-60	402, 403, 802	R, NH, HE
1376	Barrows GH, Siskin JE, Allegra JC, Grash SD. Measurement of fluorescence using digital integration of video images. J Histochem Cytochem 1984;32:741-6	IAFP 653857-62	402, 403, 802	R, NH, HE
1377				
1378				
1379				
1380				
1381	"Cold Spring Harbor Laboratory's Genome Mapping and Sequencing Conference Abstracts (May 1990), Drmanac "Towards Genome DNA Sequencing Chip Based on Oligonucleotide Hybridization."	IAFP 598193-331, IAFP598240	402, 403, 802, 901, MD	A, R, NH, HE, SD
1382	Crkvenjakov & Drmanac, An Integral Approach for Complex Genome Studies (October 1990)	IAFP 598768-822	402, 403, 802, 901	A, R, NH, HE
1383				
1384	Crkvenjakov R, Drmanac R. Sequencing of Megabase Plus DNA by Hybridization: Method	IAFP 595888-905	402, 403, 802, 901	A, R, NH, HE

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	Development. Final Technical Progress Report October 1990			
1385	U.S. Patent No. 5,219,763 ('763 Patent)	IAFP 13321-30	402, 403	R
1386	Great Britain Patent 1 561 042 ('042 Patent)	IAFP 13280-13284	402, 403	R
1387				
1388				
1389	Kricka CV			
1390	Exhibit C of Kricka Report: '243 & '432 Patent Family Histories		402, 403, 802, 901	R, NH, HE, SU, A
1391	Exhibit E of Kricka Report: Drmanac & Crkvenjakov References Reviewed		402, 403	R
1392	Exhibit D of Kricka Report: Drmanac & Crkvenjakov Timeline		402, 403, 802, 901	R, NH, HE, A
1393	Exhibit G of Kricka Report: '432 Priority Chart		402, 403, 802	R, NH, HE
1394	www.allbusiness.com/periodicals/article/685594-1.html	IAFP656346-49	402, 403, 802, 901	R, NH, HE, A
1395	www.schleicher-schuell.com		NP, ID	AV
1396	www.nuncbrand.com	IAFP656361	402, 403, 802, 901	R, NH, HE, A
1397	http://www.zeiss.com/lsm	IAFP656363	402, 403, 802, 901	R, NH, HE, A
1398	http://www.appliedbiosystems.com/about/presskit/pdfs/evolution_revolution.pdf	IAFP656350	402, 403, 802, 901	R, NH, HE, A
1399	Final Judgment from Affymetrix v. Synteni, Inc. et al. 99-21111 JF (NDCA)	IAFP657864-71	402, 403, 802	R, NH, HE
1400	Docket from Affymetrix v. Hyseq, Inc. 99-cv-21163 (NDCA)	IAFP657710-41		
1401	Docket from Affymetrix v. Synteni, Inc. et al. 99-cv-21164 (NDCA)	IAFP657742-825		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1402	Opposition by Synteni and Incyte to Motion to Strike and Dismiss Certain Allegations of Inequitable Conduct	IAFP657458-86	402, 403, 802	R, NH, HE
1403	Joint Claim Construction Statement Pursuant to Local Rule 16-11b from Affymetrix v. Synteni, Inc. et al. 99-cv-21164 (NDCA)		402, 403, ID, NP	R, AV
1404	Affymetrix Lab Notebook #19 (Power)	AVI_075820-74		
1405	U.S. Patent No. 6,023,540 (Walt and Michael)	IAFP659512-28	402, 403	R
1406	Southern et al., <i>Analyzing and comparing nucleic acid sequences by hybridization to arrays of oligonucleotides: evaluation using experimental models</i> , Genomics, v. 13 pp. 1008-1017 (1992)	IAFP 13231-39	402, 403, 802	R, NH, HE
1407	Wang et al., <i>Large-scaled identification, mapping, and genotyping of single-nucleotide polymorphisms in the human genome</i> , Science, v. 280, pp. 1077-1082 (1998)	AVI_3362-3367		
1408	Pastinen, T., et al., <i>Minisequencing: a specific tool for DNA analysis and diagnostics on oligonucleotide arrays</i> , Genome Res., v. 7, pp. 606-614 (1997)	IAFP 595602-10	402, 403, 802	R, NH, HE
1409	GoldenGate Assay Workflow	IAFP 590683-84		
1410	U.S. Patent No. 6,355,431		402, 403, NP	R, AV
1411	U.S. Patent No. 6,396,995		402, 403, NP	R, AV
1412	U.S. Patent No. 6,429,027		402, 403, NP	R, AV
1413	U.S. Patent No. 6,620,584		402, 403, NP	R, AV
1414	U.S. Patent No. 6,770,441		402, 403, NP	R, AV
1415	U.S. Patent No. 6,858,394		402, 403, NP	R, AV
1416	U.S. Patent No. 6,942,968		402, 403, NP	R, AV
1417	U.S. Patent No. 6,998,274		402, 403, NP	R, AV

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1418	Infinium Assay Workflow	IAFP 541509-10		
1419	Fan, J., et al., Highly Parallel Genomic Assays, v. 7, p. 634	IAFP532361-70	402, 403, 802	R, NH, HE
1420	Infinium I Assay System Manual	IAFP 642663-3108		
1421	Whole-Genome Expression Analysis Using the Sentrix Human-6 and Human-Ref 8 Expression BeadChips	IAFP 22575-82	402, 403, 802	R, NH, HE
1422	Gunderson K., et al., "Decoding Randomly Ordered DNA Arrays", Genome Res., v. 14, p. 870-875	IAFP 532400-07		
1423	BeadStation 500G System Manual	IAFP 642129-476		
1424	BioTechniques Supp. June 2002	IAFP 532474-75	ID, MP	R
1425	Presentation - BeadArray - Fabrication	IAFP 630843-84		
1426	Multi-Sample Gene Expression Presentation	IAFP 496335-36	MP	R
1427	Memorandum Opinion 8/16/06			
1428	WO 93/17126 Application	IAFP 13426-13511	402, 403, 802	R, NH, HE
1429	Illumina BeadStation 500G System Manual	IAFP 642226-31	ID, MP	R
1430	Gene Expression on Sentrix Arrays Direct Hybridization System Manual	IAFP 632997	ID, MP	R
1431	'365 Patent File History -- 12/20/01 A't at 1, 4	IAFP 1483-86	MP	R
1432	Microarrays and Related Technologies - Chapter 4	AVI_013652-54	402, 403, 802	R, NH, HE
1433	High-Throughput Genomics	AVI_9411-12	402, 403, 802	R, NH, HE
1434	6,440,667 Patent File History - 5/2/00 A't at 1 (Claim 58)	IAFP 20128-29	402, 403	R
1435	6,440,667 Patent File History - 2/28/01 A't at 2,9	IAFP20289-96	402, 403	R
1436	6,440,667 Patent File History - 9/20/01 Interview Summary	IAFP 20355	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1437	6,440,667 Patent File History - 9/25/01 A't at 2 (Claim 58)	IAFP 20357	402, 403	R
1438	'531 Patent File History - 3/18/96 Examiner Interview Summary Record	IAFP 89	MP, 802	NH, HE, R
1439	'531 Patent File History - 3/25/96 Examiner Amendment at 2	IAFP 86	MP, 802	NH, HE, R
1440	U.S. Patent No. 5,636,612	IAFP 644449-69	402, 403	R
1441	'365 Patent File History - 12/20/01 A't at 14,12	IAFP 1483-1498	MP	R
1442	U.S. Patent No. 6,544, 732	IAFP659529-47	402, 403	R
1443	Lusis Report Exhibit C Press Releases		402, 403, MD, 802	R, SD, NH, HE
1444	Lusis Report Exhibit D Dictionary		402, 403, 802	R, NH, HE
1445	Lusis Report Updated CV			
1446	Cantor, et al., Report on the Sequencing by Hybridization Workshop, GENOMICS 13(4): 1378-1383 (August 1992) ("Moscow Report")	IAFP 644443-48	402, 403, 802	R, NH, HE
1447	Church, Computer Assisted Multiplex Sequencing, Progress Report (August 1, 1990-July 31, 1991) (August 1991)	IAFP 657957-65	402, 403, 802, 901	R, NH, HE, A
1448	Dear et al, "A Sequence Assembly and Editing Program for Efficient Management of Large Projects," Nucleic Acids Research, 19(14): 3907-3911 (July 25, 1991)	IAFP 657966-70	402, 403, 802	R, NH, HE
1449	Drmanac et al, "SBH and the Integration of Complementary Approaches in the Mapping, Sequencing, and Understanding of Complex Genomes," Argonne National Laboratory (January 1992)	IAFP 643939-962	402, 403, 802, 901	R, NH, HE, A
1450	Drmanac et al. "Sequencing of Megabase Plus DNA by Hybridization: Theory of the Method", 1989, Genomic 4:114-128	IAFP594928-42	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1451	E.M. Southern, et al., Analyzing and Comparing Nucleic Acid Sequences by Hybridization to Arrays of Oligonucleotides: Evaluation Using Experimental Models, GENOMICS 13:1008-17 (1992) ("Southern")	IAFP5989-98	402, 403, 802	R, NH, HE
1452	J.K. Elder, Image Processing in Nucleic Acid Sequence Analysis, A Thesis submitted for the degree of Doctor of Philosophy, University of Oxford (1993) ("Elder thesis")	IAFP632785-950	402, 403, 802, 901	R, NH, HE, A
1453	Kaiser, et al., "Specific-primer-directed DNA sequencing using automated fluorescence detection" Nucleic Acids Research, 17(15): 6087-6102 (1989)	IAFP658000-015	402, 403, 802	R, NH, HE
1454	Khrapko et al., "A Method for DNA sequencing by hybridization with oligonucleotide matrix" DNA Seq. Map 1:375-388. 1991 ("Khrapko II")	IAFP620747-760	402, 403, 802	R, NH, HE
1455	Khrapko et al., "Hybridization of DNA with Oligonucleotides Immobilized in Gel: Convenient Method for Recording Individual Base Changes," Engelhardt Institute of Molecular Biology, Russian Academy of Sciences, Moscow. 1991 (718-730)	IAFP643912-925	402, 403, 802, 901	R, NH, HE, A
1456	Lipshutz et al., "DNA Sequence Confidence Estimation," Genomics, 19: 417-424 (1994).	AVI_2793-800	402, 403	R
1457	Lysov, et al., A New Method for Determining the DNA Nucleotide Sequence by Hybridization with Oligonucleotides 303 (6): 1508-1511 (December 1988)	IAFP654733-35	402, 403, 802	R, NH, HE
1458	Mirzabekov, Sequencing of DNA by Hybridization with oligonucleotides matrix (SHOM). March 1992 ("Mirzabekov Grant Application")	IAFP643931-38	402, 403, 802, 901	R, NH, HE, A
1459	Mirzabekov, DNA sequencing by hybridization - a megasequencing method and a diagnostic tool?, TIBTECH 12:27-32 (Jan. 1994) ("Mirzabekov I")	IAFP643926-30	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1460	Rabbee, et al., A genotype calling algorithm for affymetrix SR arrays, Bioinformatics 22(1):7-12 (2006)	IAFP658020-25	402, 403, 802	R, NH, HE
1461	Strezoska et al., 1991, "DNA Sequencing by Hybridization: 100 Bases Read by a Non-gel-based Method", Proc. Natl. Acad. Sci. 88:10089-10093	IAFP596005-09	402, 403, 802	R, NH, HE
1462	U. Maskos and E.M. Southern, A Study of Oligonucleotide Reassociation Using Arrays of Oligonucleotides Synthesized on a Glass Support, Nucleic Acids Research, 21(20): 4663-69 (1993) ("Maskos")	IAFP13225-30	402, 403, 802	R, NH, HE
1463	U.S. Patent No. 4,811,218	IAFP619501-22	402, 403	R
1464	U.S. Patent No. 5,972,619	IAFP596454-86	402, 403	R
1465	Hunkapiller et al., "Large-Scale and Automated DNA Sequence Determination," 1991, Science 254:59-67		402, 403, 802	R, NH, HE
1466	Quackenbush CV			
1467	Cantor, et al., SBH: An Idea Whose Time Has Probably Come, Nov. 19-20, 1991, Report on the Sequencing by Hybridization Workshop, Moscow, USSR	IAFP598479-92	402, 403, 802, 901	R, NH, HE, A
1468	U.S. Patent No. 4,802,101 (Hara)	IAFP619493-500	402, 403	R
1469	http://arep.med.harvard.edu/gmc_pub.html		NP, 402, 403, 802	AV, R, NH, HE
1470	Claim Constructions set forth by the Court		ID	
1471	http://www.illumina.com/General/pdf/LinkageIV/GOLDENGATE_ASAY_FINAL.pdf			
1472	http://www.illumina.com/General/Products/SRpdf/INFINWKFLOW.pdf			
1473	Kermani Powerpoint, July 17, 2002, IAFP00507221-278 at 235-36.	IAFP507221-78	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1474	Guerra Expert Report		802	NH
1475	GenTrain\Normalization.cs at lines 524-528	GenTrain\Normalization.cs at lines 524-528	NP, ID	AV
1476	GenTrain\GenTrain52.cs at lines 1856-1866	GenTrain\GenTrain52.cs at lines 1856-1866	NP, ID	AV
1477	GenCall\Form1.cs at line 3947-3962	GenCall\Form1.cs at line 3947-3962	NP, ID	AV
1478	Ugozzoli, L., Wahlqvist, J.M., Ehsani, A., Kaplan, B.E., and Wallace, R.B., (1992) "Detection of Specific Alleles by Using Allele-Specific Primer Extension Followed by Capture on Solid Support" GATA 9(4): 107-112, 1992	IAFP659386-9391	402, 403, 802	R, NH, HE
1479	Zhang L, Miles MF, Aldape KD. (2003) "A model of molecular interactions on short oligonucleotide microarrays." Nature Biotechnology 21(7):818-21, Tab ____	IAFP659593-97	402, 403, 802	R, NH, HE
1480	Wick, L.M. Rouillard, J.M., Whittam, T.S., Gulari, E., Tiedje I, J.M., and. Hashsham, S.A., (2006) "On-chip non-equilibrium dissociation curves and dissociation rate constants as methods to assess specificity of oligonucleotide probes" Nucleic Acids Research, 34(3), e.26	IAFP659583-92	402, 403, 802	R, NH, HE
1481	U.S. Patent No. 5,489,678	AVI 38762-802	402, 403	R
1482				
1483	Pirrung et al "Proofing of Photolithographic DNA Synthesis with 3.5 Dimethoxybenzoinyloxycarbonyl- Protected Deoxynucleoside Phosphoramidites"	IAFP5312--17	402, 403, 802	R, NH, HE
1484	Silverman statement	IAFP7337-43	402, 403, 802, 901	R, A, NH, HE
1485				

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1486				
1487	Carruthers, "Gene Synthesis Machines: DNA Chemistry and Its Uses", Science, 230:281, (1985)	IAFP4121-25		
1488	Drmanac, et al., "Reliable Hybridization of Oligonucleotides as Short as 6 Nucleotides" DNA Cell Bio., 9: 527-34, (1990)	IAFP598658-65	402, 403, 802	R, NH, HE
1489				
1490				
1491				
1492	Pirrung, et al., J. Org. Chem., 1995, 60, 6270	IAFP5318-24	402, 403, 802	R, NH, HE
1493				
1494				
1495				
1496				
1497				
1498	Dower Lab Notebook	AVI_138695-755		
1499	Dower Lab Notebook	AVI_139053-118		
1500	Solas Lab Notebook	AVI_76899-997		
1501	Solas Lab Notebook	AVI_76998-7103		
1502				
1503	Fodor Lab notebook	AVI_138756-963		
1504	Fodor Lab notebook	AVI_139119-216		
1505	Fodor Lab notebook	AVI_139217-318		
1506	Fodor Lab notebook	AVI_140514-24		
1507	Illumina BeadStation 500X manual	IAFP10235-40	MP	R

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1508				
1509	http://www.illumina.com/products/snp/mhc_panelset.ilmn		NP, 402, 403, 802	AV, R, HE, NH
1510	http://www.illumina.com/General/pdf/LinkageIV/LINKAGE_4_DATA_FINAL2.pdf		NP, 402, 403, 802	AV, R, HE, NH
1511	http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=AFFX&script=417&layout=-6&item_id=573680		NP, 402, 403	AV, R
1512	http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=AFFX&script=416&layout=-6&item_id=771923		NP, 402, 403	AV, R
1513	Agilent Technologies Form 10-K for 2005		402, 403, 802, NP	AV, R, NH, HE
1514	Agilent Technologies Form 10-K for 2002		402, 403, 802, NP	AV, R, NH, HE
1515				
1516	Form 10-K, Illumina, Inc., January 1, 2006			
1517	Form 10-K, Affymetrix, Inc., December 31, 2005			
1518	Dickinson Deposition, Exhibit 563	Dickinson Dep. Ex. 563	402, 403, 802, 901	R, NH, HE, A
1519	http://www.illumina.com/products/systems/systems_production.ilmn		NP, 402, 403, 802	AV, R, HE, NH
1520	http://www.illumina.com/products/systems/systems_benchtop.ilmn		NP, 402, 403, 802	AV, R, HE, NH
1521	Form 10-K, Illumina, Inc., December 28, 2003			
1522	Affymetrix Press Release "Affymetrix Updates Revenue Outlook for Third Quarter; Manufacturing Yields Affect Shipment of High Demand Product," Septemeber 27, 2005	AVI_132691-93	402, 403	R
1523	AFFX - Q1 2006 Affymetrix Earnings Conference Call, April 20, 2006	IAFP658965-87	402, 403, 802	R, NH, HE

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1524	"Affymetrix Guidance Announcement Final Transcript," September 27, 2005	IAFP658954-64	402, 403, 802	R, NH, HE
1525	"Affymetrix Guidance Announcement Final Transcript," January 5, 2006	IAFP658932-53	402, 403, 802	R, NH, HE
1526	Affymetrix document re 500K capacity issue		NP, ID	AV
1527	Affymetrix document re 500K capacity issue	AVI_208510-17	402, 403	R
1528	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002-2005	AVI_201538		
1529	Affymetrix email re chip shortfall in Q4, 2005	AVI_208747-49	402, 403	R
1530				
1531	AFFX -- Affymetrix at Bears Stearns 19 th Annual Healthcare Conference, September 12, 2006	IAFP658988-96	402, 403, 802	R, NH, HE
1532	Affymetrix document identifying technology licensed under Tufts license is fundamental technology of Illumina's commercial products	AVI_065673	402, 403	R
1533	License Agreement between Amersham Biosciences and Illumina, 1/24/02	Velarde Dep. Ex. 557	402, 403	R
1534	Illumina licensing proposal to Affymetrix	Lipshutz Dep. Ex. 57	402, 403, 802	R, NH, HE
1535	"Affymetrix and Molecular Dynamics Enter Agreements to Expand Access to DNA Array-Based Genetic Analysis Tools," Decemeber 2, 1997	"Affymetrix and Molecular Dynamics Enter Agreements to Expand Access to DNA Array-Based Genetic Analysis Tools," Decemeber 2, 1997	NP, 402, 403	R, AV
1536	Letter from Takara Shuzo to Affymetrix complaining about financial terms under license agreement and that Agilent has not taken a license under Affymetrix patents	AVI_203354-5	402, 403, 802	R, NH, HE
1537				

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1538				
1539	Letter from Genomic Solutions discussing potential collaboration that was discussed during licensing negotiations	AVI_204356	402, 403, 802	R, NH, HE
1540	Affymetrix 10-K, March 31, 2003	AVI_119954-120060		
1541				
1542	License Agreement between Galvoscan and Affymetrix	AVI_202212-24	402, 403	R
1543	Purchase Agreement between Galvoscan and Affymetrix	AVI_202201-11	402, 403	R
1544				
1545	License agreement between PHRI and Affymetrix.	PHRI_002350-83	402, 403, MD	R, SD
1546				
1547	License agreement between SBH Genomics and Affymetrix	AVI_201387-411	402, 403	R
1548	"Hyseq Creates Subsidiary to Focus on DNA Chip and Sequencing Technology," News Release 10/25/01		NP, 402, 403, 802	AV, R, NH, HE
1549	AUTM U.S. Licensing Survey: FY 2004. Association of University Technology Managers, p. 56	IAFP659013-81	402, 403, 802	R, NH, HE
1550	License Agreement between Tufts University and Illumina	IAFP22372-88	105	AI
1551	License agreement between Beckman Coulter and Illumina.	IAFP 643772-90	402, 403	R
1552	License agreement between Dade Behring and Illumina.	IAFP 589952-68	402, 403	R
1553	License Agreement between Invitrogen IP Holdings and Illumina, 3/31/04	IAFP 644096-113	402, 403	R

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1554	License Agreement between Incyte Corp. and Illumina, 11/22/04	IAFP613338-45	402, 403	R
1555	License Agreement between Stratagene and Illumina, 1/21/04	IAFP613389-403	402, 403	R
1556	License Agreement between Spyder Instruments, Inc. and Trega Biosciences, 4/14/99	IAFP644204-17	402, 403	R
1557	Affymetrix press release re expanded licensing program	AVI_202640-2	105	AI
1558				
1559	"Algorithm and Blues: New Software Enables Affy to Cut 500K Price Tag, But Investors Left Spooked," BioArray News, July 25, 2006		NP, 402, 403, 802	R, NH, HE, AV
1560	http://www.roche.com/de/med_dia_2005-05-09		NP, 402, 403, 802	AV, R, NH, HE
1561	Ron Winslow, "Biotechnology: Hoffman-La Roche To Ease Curb on Gene Technology," The Wall Street Journal, January 27, 1992	IAFP659088-89	402, 403, 802	R, NH, HE
1562				
1563	Illumina, Inc. 2003 Annual Report		NP, 402, 403, 802	R, AV, NH, HE
1564	Illumina, Inc. 2005 Annual Report		NP, 402, 403, 802	R, AV, NH, HE
1565	Goldscheider, Robert, John Jarosz, and Carla Mulhern, "Use of the 25 Per Cent Rule in Valuing IP," <i>Les Nouvelles</i> , December 2002	IAFP659002-12	802	NH, HE
1566	UBS Investment Research, "Q-Series: The DNA Microarray Market" 01/23/06		ID	
1567	Affymetrix invoice sales, 1/02 - 12/05	AVI_196154 (Native Production)		
1568	Affymetrix Internal Finance Reports	AVI_192641-5202		
1569	Illumina Invoice Sales Since Jan. 2002	IAFP643963-66	402, 403, 802, 901	R, NH, HE, A

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1570	Illumina Journal Entry Report	IAFP643966-69	402, 403, 802, 901	R, NH, HE, A
1571	Illumina Instrument Gross Margins	IAFP641507 A-R		
1572	Illumina financial sheets	IAFP643324-5		
1573	Letter from C. Garlington to A. Gross, 3/17/06	N/A	402, 403, 802, 901	R, NH, HE, A
1574	Illumina product key	IAFP 643967-93	402, 403	R
1575	Sims Expert Rep. Ex. A	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1576	Sims Expert Rep. Ex. D.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1577	Sims Expert Rep. Ex. D.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1578	Sims Expert Rep. Ex. D.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1579	Sims Expert Rep. Ex. D.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1580	Sims Expert Rep. Ex. D.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1581	Sims Expert Rep. Ex. D.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1582	Sims Expert Rep. Ex. D.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1583	Sims Expert Rep. Ex. D.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1584	Sims Expert Rep. Ex. E.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1585	Sims Expert Rep. Ex. F.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1586	Sims Expert Rep. Ex. G.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1587	Sims Expert Rep. Ex. G.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1588	Sims Expert Rep. Ex. G.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1589	Sims Expert Rep. Ex. G.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1590	Sims Expert Rep. Ex. G.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1591	Sims Expert Rep. Ex. G.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1592	Sims Expert Rep. Ex. G.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1593	Sims Expert Rep. Ex. G.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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1594	Sims Expert Rep. Ex. G.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1595	Sims Expert Rep. Ex. G.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1596	Sims Expert Rep. Ex. G.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1597	Sims Expert Rep. Ex. G.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1598	Sims Expert Rep. Ex. G.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1599	Sims Expert Rep. Ex. G.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1600	Sims Expert Rep. Ex. G.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1601	Sims Expert Rep. Ex. G.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1602	Sims Expert Rep. Ex. G.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1603	Sims Expert Rep. Ex. G.7.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1604	Sims Expert Rep. Ex. G.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1605	Sims Expert Rep. Ex. G.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1606	Sims Expert Rep. Ex. H.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1607	Sims Expert Rep. Ex. H.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1608	Sims Expert Rep. Ex. H.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1609	Sims Expert Rep. Ex. H.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1610	Sims Expert Rep. Ex. H.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1611	Sims Expert Rep. Ex. H.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1612	Sims Expert Rep. Ex. H.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1613	Sims Expert Rep. Ex. H.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1614	Sims Expert Rep. Ex. H.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1615	Sims Expert Rep. Ex. H.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1616	Sims Expert Rep. Ex. H.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1617	Sims Expert Rep. Ex. H.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1618	Sims Expert Rep. Ex. H.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1619	Sims Expert Rep. Ex. H.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1620	Sims Expert Rep. Ex. H.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1621	Sims Expert Rep. Ex. H.5.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1622	Sims Expert Rep. Ex. H.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1623	Sims Expert Rep. Ex. H.6.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1624	Sims Expert Rep. Ex. H.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1625	Sims Expert Rep. Ex. H.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1626	Sims Expert Rep. Ex. H.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1627	Sims Expert Rep. Ex. H.9.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1628	Sims Expert Rep. Ex. H.9.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1629	Sims Expert Rep. Ex. I.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1630	Sims Expert Rep. Ex. I.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1631	Sims Expert Rep. Ex. I.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1632	Sims Expert Rep. Ex. I.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1633	Sims Expert Rep. Ex. I.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1634	Sims Expert Rep. Ex. I.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1635	Sims Expert Rep. Ex. I.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1636	Sims Expert Rep. Ex. I.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1637	Sims Expert Rep. Ex. I.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1638	Sims Expert Rep. Ex. I.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1639	Sims Expert Rep. Ex. I.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1640	Sims Expert Rep. Ex. I.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1641	Sims Expert Rep. Ex. I.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1642	Sims Expert Rep. Ex. I.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1643	Sims Expert Rep. Ex. I.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1644	Sims Expert Rep. Ex. I.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1645	Sims Expert Rep. Ex. I.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1646	Sims Expert Rep. Ex. I.7.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1647	Sims Expert Rep. Ex. I.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1648	Sims Expert Rep. Ex. I.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1649	Sims Expert Rep. Ex. J.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1650	Sims Expert Rep. Ex. J.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1651	Sims Expert Rep. Ex. J.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1652	Sims Expert Rep. Ex. J.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1653	Sims Expert Rep. Ex. J.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1654	Sims Expert Rep. Ex. J.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1655	Sims Expert Rep. Ex. J.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1656	Sims Expert Rep. Ex. J.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1657	Sims Expert Rep. Ex. J.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1658	Sims Expert Rep. Ex. J.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1659	Sims Expert Rep. Ex. J.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1660	Sims Expert Rep. Ex. J.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1661	Sims Expert Rep. Ex. J.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1662	Sims Expert Rep. Ex. J.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1663	Sims Expert Rep. Ex. J.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1664	Sims Expert Rep. Ex. J.5.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1665	Sims Expert Rep. Ex. J.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1666	Sims Expert Rep. Ex. J.6.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1667	Sims Expert Rep. Ex. J.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1668	Sims Expert Rep. Ex. J.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1669	Sims Expert Rep. Ex. J.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1670	Sims Expert Rep. Ex. J.9.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1671	Sims Expert Rep. Ex. K.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1672	Sims Expert Rep. Ex. K.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1673	Sims Expert Rep. Ex. K.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1674	Sims Expert Rep. Ex. K.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1675	Sims Expert Rep. Ex. K.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1676	Sims Expert Rep. Ex. K.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1677	Sims Expert Rep. Ex. K.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1678	Sims Expert Rep. Ex. K.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1679	Sims Expert Rep. Ex. K.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1680	Sims Expert Rep. Ex. K.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1681	Sims Expert Rep. Ex. K.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1682	Sims Expert Rep. Ex. K.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1683	Sims Expert Rep. Ex. K.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1684	Sims Expert Rep. Ex. K.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1685	Sims Expert Rep. Ex. K.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1686	Sims Expert Rep. Ex. K.5.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1687	Sims Expert Rep. Ex. K.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1688	Sims Expert Rep. Ex. K.6.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1689	Sims Expert Rep. Ex. K.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1690	Sims Expert Rep. Ex. K.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1691	Sims Expert Rep. Ex. K.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1692	Sims Expert Rep. Ex. K.9.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1693	Sims Expert Rep. Ex. K.9.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1694	Sims Expert Rep. Ex. L.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1695	Sims Expert Rep. Ex. L.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1696	Sims Expert Rep. Ex. L.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1697	Sims Expert Rep. Ex. L.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1698	Sims Expert Rep. Ex. L.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1699	Sims Expert Rep. Ex. L.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1700	Sims Expert Rep. Ex. L.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1701	Sims Expert Rep. Ex. L.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1702	Sims Expert Rep. Ex. L.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1703	Sims Expert Rep. Ex. L.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1704	Sims Expert Rep. Ex. L.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1705	Sims Expert Rep. Ex. L.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1706	Sims Expert Rep. Ex. L.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1707	Sims Expert Rep. Ex. L.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1708	Sims Expert Rep. Ex. L.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1709	Sims Expert Rep. Ex. L.5.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1710	Sims Expert Rep. Ex. L.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1711	Sims Expert Rep. Ex. L.6.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1712	Sims Expert Rep. Ex. L.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1713	Sims Expert Rep. Ex. L.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1714	Sims Expert Rep. Ex. L.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1715	Sims Expert Rep. Ex. L.9.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1716	Sims Expert Rep. Ex. L.9.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1717	Sims Expert Rep. Ex. M.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1718	Sims Expert Rep. Ex. M.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1719	Sims Expert Rep. Ex. M.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1720	Sims Expert Rep. Ex. M.2.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1721	Sims Expert Rep. Ex. M.2.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1722	Sims Expert Rep. Ex. M.2.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1723	Sims Expert Rep. Ex. M.2.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1724	Sims Expert Rep. Ex. M.2.5	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1725	Sims Expert Rep. Ex. M.2.6	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1726	Sims Expert Rep. Ex. M.3.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1727	Sims Expert Rep. Ex. M.4.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1728	Sims Expert Rep. Ex. M.4.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1729	Sims Expert Rep. Ex. M.4.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1730	Sims Expert Rep. Ex. M.5.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1731	Sims Expert Rep. Ex. M.5.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1732	Sims Expert Rep. Ex. M.5.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1733	Sims Expert Rep. Ex. M.6.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1734	Sims Expert Rep. Ex. M.6.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1735	Sims Expert Rep. Ex. M.7.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1736	Sims Expert Rep. Ex. M.8.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1737	Sims Expert Rep. Ex. M.8.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1738	Sims Expert Rep. Ex. M.9.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1739	Sims Expert Rep. Ex. M.9.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1740	Sims Expert Rep. Ex. M.	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1741	Sims Expert Rep. Ex. N.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1742	Sims Expert Rep. Ex. N.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1743	Sims Expert Rep. Ex. O.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1744	Sims Expert Rep. Ex. P.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1745	Sims Expert Rep. Ex. P.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1746	Sims Expert Rep. Ex. Q.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1747	Sims Expert Rep. Ex. R.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1748	Sims Expert Rep. Ex. S.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1749	Sims Expert Rep. Ex. S.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1750	Sims Expert Rep. Ex. S.1.3	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1751	Sims Expert Rep. Ex. S.1.4	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1752	Sims Expert Rep. Ex. T.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1753	Sims Expert Rep. Ex. T.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1754	Sims Expert Rep. Ex. U.1.1	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1755	Sims Expert Rep. Ex. U.1.2	N/A	402, 403, 802, 901, 602	R, NH, HE, A, PK
1756	Letter from R. Lipshutz to Takara re renegotiation of license	AVI_203404-05	402, 403	R
1757	Document re Agilent Technologies	AVI_211556-57	402, 403, 802	R, NH, HE
1758	Document re GE Healthcare, Codelink Bioarray Systems	AVI_211558-63	402, 403, 802	R, NH, HE
1759	Document re Sequenom	AVI_211580-81	402, 403, 802	R, NH, HE
1760	JP Morgan document re Affymetrix	AVI_212303-5	105	AI

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1761	Illumina proposal to Tufts via MBRI	Stuelpnagel Dep. Ex. 345	402, 403, 802	R, NH, HE
1762	Letter from MBRI to Illumina	Stuelpnagel Dep. Ex. 346	402, 403, 802	R, NH, HE
1763	Illumina, Form-10K, Fiscal Year Ending January 1, 2006			
1764	Affymetrix Form 10-K Fiscal Year ending December 31, 2005			
1765	Q4 2002 Affymetrix Earnings Conference Call, Final Transcript, p. 4	IAFP645151-65	402, 403, 802	R, NH, HE
1766	"Affymetrix Acquires ParAllele BioScience," Jan. 6, 2005, DrugResearcher.com	IAFP644932-34	402, 403, 802	R, NH, HE
1767	Affymetrix Form DEF 14A, Apr. 29, 2003		NP, ID	AV
1768	Affymetrix website (www.affymetrix.com)		NP, ID, MD	AV, SD
1769	Affymetrix website (www.com/corporate/history/factsheet.affx)		NP, ID, 402, 403	AV, R
1770	Affymetrix News Release, July, 19, 1996, "Affymetrix Inc. Reports Second Quarter Results."		NP, ID, 402, 403	AV, R
1771	Affymetrix News Release, Septemeber 7, 1999, "Affymetrix Commences Commerical Shipments of GeneChip Products From West Sacramento Manufacturing Facility."		NP, ID, 402, 403	AV, R
1772	Affymetrix Form 10-Q, period ending Sept. 30, 1996			
1773	Affymetrix News Release, Aug. 31, 1999		NP, ID, 402, 403	AV, R
1774	"Opportunities for DNA Microchip and Array Technologies," Frost & Sullivan, 1999	AVI_17597-789	402, 403, 802	R, NH, HE
1775	DNA Microarrays, A Strategic Market Analysis, 2001	AVI_16353-566	402, 403, 802	R, NH, HE
1776	"Affymetrix Launches First Commercial Human DNA Array to Use Draft of Human Genome," Affymetrix News Release, Jan. 12, 2002	IAFP644973-75	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1777				
1778	"Affymetrix Competitive Advantage Improving, New Products Near Term," Baird U.S. Equity Research, 9/12/02	IAFP467722-26	402, 403, 802	R, NH, HE
1779	"Affymetrix Launches New Products Including a Whole Human Genome Single Array," Baird U.S. Equity Research, Oct. 2, 2003	IAFP467605-09	402, 403, 802	R, NH, HE
1780	"Commercial Aspects of Microarray Technology," Technology Report, Ken Rubenstein, March 2003	IAFP644922-24	402, 403, 802	R, NH, HE
1781	"Affymetrix Results from End-Market Studies," Baird U.S. Equity Research, 1/15/04	IAFP467471-83	402, 403, 802	R, NH, HE
1782	Reagents and Diagnostics, Highlights from the 2004 ABRF Meeting, Update on Microarray Market," Baird U.S. Equity Research, 3/05/04	IAFP467454-57	402, 403, 802	R, NH, HE
1783	"Affymetrix Reports Break-Out Q4-04, Business Hitting on All Cylinders, PT to \$46," Baird U.S. Equity Research, 1/27/05	IAFP616698-707	402, 403, 802	R, NH, HE
1784	"Affymetrix Reports Light Q205, Guides for Greater Back-End Loading, Maintain Underperform," Baird U.S. Equity Research, 7/22/05	IAFP581377-86	402, 403, 802	R, NH, HE
1785	Stuelpnagel Dep. Exh. 9	Stuelpnagel Dep. Exh. 9	105	AI
1786	Affymetrix at Bear Stearns 19 th Annual Healthcare Conference, Final Transcript, 9/12/06	IAFP645423-31	402, 403, 802	R, NH, HE
1787	Affymetrix at Pacific Growth Equities 2005 Life Sciences Growth, Final Transcript, 6/06/05	IAFP645317-24	402, 403	R
1788	Illumina website (www.illumina.com)		NP, ID, MD	AV, SD
1789	Illumina Products and Services Catalog 2005	IAFP641957-78		
1790	Affymetrix News Release, July 21, 2004		NP, ID, 402, 403	AV, R
1791	Agilent Technologies website (www.agilent.com)		NP, ID, MD, 802	AV, SD, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1792	Applied Biosystems (www.appliedbiosystems.com)		NP, ID, MD, 802	AV, SD, NH, HE
1793	"Affymetrix Dominates DNA Microarray Market," PR Newswire, 8/31/05	IAFP645005-06	402, 403, 802	R, NH, HE
1794	"Power Tools for the Gene Age/Affymetrix Chips Digging Deeper into the Genome," The San Francisco Chronicle, 2/07/05;	IAFP644908-13	402, 403, 802	R, NH, HE
1795	"Canon Plans to Commercialize DNA Chips for Medical Use," The Wall Street Journal, 3/30/05	IAFP944903-04	402, 403, 802	R, NH, HE
1796	"Affymetrix, Inc. - SWOT Analysis," DataMonitor Company Profiles, 4/23/05		NP, ID, 402, 403, 802	AV, R, NH, HE
1797	"Sects, Strangers, and Drugs: Genotyping Gets Specific (Genetic Factors and Drug Developments)," Genomics and Proteomics, 9/01/05	IAFP644905-07	402, 403, 802	R, NH, HE
1798	"Affymetrix and Agilent Pursue New Microarray Markets," Instrument Business Outlook, 12/15/05	IAFP644977-83	402, 403, 802	R, NH, HE
1799	Dickinson Exh. 560	IAFP541080-243	ID, 402, 403	R
1800	Dickinson Exh. 559	Dickinson Exh. 559		
1801	Affymetrix news release 3/1/03		NP, ID, 402, 403	AV, R
1802	Affymetrix news release 10/22/03		NP, ID, 402, 403	AV, R
1803	Affymetrix news release 9/28/05		NP, ID, 402, 403	AV, R
1804	Affymetrix news release 10/5/2005		NP, ID, 402, 403	AV, R
1805	Affymetrix news release, 10/24/05		NP, ID, 402, 403	AV, R
1806	Affymetrix news release 1/1/2006		NP, ID, 402, 403	AV, R
1807	Affymetrix news release 1/26/06		NP, ID, 402, 403	AV, R
1808	Affymetrix news release 2/7/06		NP, ID, 402, 403	AV, R
1809	Affymetrix Inc. Form 425, 6/1/05	AVI_127636-50	402, 403, 802	R, NH, HE
1810	Affymetrix Document	AVI_68794-815	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1811	Brand Attitudes & Awareness Study: Focus on DNA Analysis Market, 7/31/04	AVI_82570-644	402, 403	R
1812	Nussbacher, K. "Biopoly Money" Wired.com, June 2000	IAFP644919-21	402, 403, 802	R, NH, HE
1813	Van de Goor, Tom A. "A History of DNA Microarrays", PharmaDD, 9/1/05	IAFP644914-18	105	AI
1814	Illumina meeting presentation	IAFP585780-815	402, 403, 802	R, NH, HE
1815	"Market size and Growth Expectations," Frost and Sullivan, 2002	AVI_3840-53	402, 403, 802	R, NH, HE
1816	"Power Tools for the Gene Age/Affymetrix Chips Digging Deeper into the Genome," San Francisco Chronicle, Feb. 7, 2005	IAFP644908-13	402, 403, 802	R, NH, HE
1817	"Illumina Reports Q4-03 Revenues in Line with Expectations," Baird U.S. Equity Research, 1/28/04	AVI_71741-49	402, 403, 802	R, NH, HE
1818	Email from Janet Lankard to Lydia Willing, 2/25/04	AVI_55635-36	402, 403	R
1819	SWOT Analysis, Competitive Summit, 5/17/05	AVI_89173-75	402, 403	R
1820	Email from Tracy Lane to Ted Young, et al., 6/2/04	AVI_56073-74	402, 403	R
1821	Email from Carl Raimond to Gregg Fergus, 10/20/04	AVI_57538-39	402, 403	R
1822	Email from Todd Pollard to Mathew Lorence, 2/3/05	AVI_83186-89	402, 403, 802	R, NH, HE
1823	Emails between Junya Tominaga and Tristan Orpin dated 12/05	IAFP640189	402, 403, 802	R, NH, HE
1824	Email from B. Singh to T. Orpin dated 10/20/05	IAFP640199-200	402, 403, 802	R, NH, HE
1825	Email from Raimond to Stratton, 7/22/04	AVI_57846-48	402, 403	R
1826	Email from Gregory Marcus to Yap, 7/23/04	AVI_62796-97	402, 403	R
1827	Commercial Monthly Report, 5/04	AVI_91901	402, 403, MP, 802	R, NH, HE, SD
1828	Perlegen Sciences, Inc. Form S-1, 4/10/06		NP, 402, 403, 802	R, AV, NH, HE
1829	Email from B. Kain to J. Stuelpnagel et al, 11/04	IAFP535717-19	402, 403, 802	R, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1830	Email from Garsetti to Sean Hu and Bill Balch, 8/9/04	IAFP640177-79	402, 403, 802	R, HE, NH
1831	Email from Kyle O'Connor to Dickinson, 10/14/04; See Tab 96	IAFP640180	402, 403, 802	R, HE, NH
1832	Emails among Janet Lankard to Curtis Fideler, Neal Shea, Jesse Pope-Chapel, Joe Gray, 5/04	AVI_56451-53	402, 403, 802	R, HE, NH
1833	Lipshutz Exh. 71	Lipshutz Dep. Ex. 71	402, 403	R
1834	Patent License Agreement between Affymetrix and Axon dated 4/8/04	AVI_134769-808	402, 403	R
1835	Strategic Planning Meeting Notes dated 8/21/00	IAFP570148-53	402, 403	R
1836	Affymetrix competitive position document on Illumina	AVI_55704-06	402, 403	R
1837	Email from E. Pleshko to T. Orpin dated 11/29/05	IAFP640190	402, 403, 802	R, HE, NH
1838	Email from M. Munson to T. Orpin dated 11/29/05	IAFP640191	402, 403, 802	R, HE, NH
1839	Email from J. Garsetti to J.B. Fan dated 10/20/04	IAFP640181-82	402, 403, 802	R, HE, NH
1840	Emails from R. Laxman to T. Orpin et al dated 8/19/05	IAFP640185-86	402, 403, 802	R, HE, NH
1841	Email from E. Pleshko to B. Balch dated 4/14/04	IAFP640201-02	402, 403, 802	R, HE, NH
1842	"Highly Parallel SR Genotyping," J.-B. Fan, et al.	IAFP532361-67		
1843	"Decoding Randomly Ordered DNA Arrays," Kevin Gunderson, et al	IAFP532400-07		
1844	"A Novel, High-Performance Random Array Platform for Quantitative Gene Expression Profiling," Kuhn, et al.	IAFP532441-50	402, 403, 802	R, HE, NH
1845	Orpin Exh. 223	IAFP480266-314	MP	R
1846	Orpin Exh. 307	Orpin Exh. 307	105, 402, 403	AI, R
1847	Emails among McBean, Malloy, et al. 1/05	IAFP601532-34	402, 403, 802	R, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1848	Emails from G. Fergus and G. Yap dated 3/20/05	AVI_81872-80	402, 403, 802	R, HE, NH
1849	Email from Deloukas to Orpin, 3/27/05	IAFP602964-66	402, 403, 802	R, HE, NH
1850	"Affy CFO Sheds New Light on Genotyping Woes, Introduces New Products at Investor Conference," 5/9/06, BioArraynews.com	IAFP644770-72	402, 403, 802	R, HE, NH
1851	R. Weinstein CV	Weinstein Expert Report Exhibits 1, 2		
1852	Document entitled "Revenue and Net Profit Calculation: Illumina Proposal for Wellcome Trust Control Consortium May 11, 2005"	Weinstein Expert Report Exhibit 4	402, 403, 802, 901, 602	R, A. PK, HE, NH, SU
1853	Document entitled "Revenue and Net Profit Calculation: Orders from Eurys Genomics to Illumina 2005"	Weinstein Expert Report Exhibit 5	402, 403, 802, 901, 602	R, A. PK, HE, NH, SU
1854	Illumina financial summaries	IAFP643320-25		
1855	Proposal for Wellcome Trust Case Control Consortium, April 27, 2005	IAFP644429-32	402, 403, 802	R, HE, NH
1856	Proposal for Wellcome Trust Control Consortium, May 11, 2005	IAFP644242-97	402, 403, 802	R, HE, NH
1857	Illumina Financial Tables	IAFP643963-66	402, 403, 802, 901	R, HE, SU, NH, A
1858	Illumina Financial Reports	IAFP641507 A-R		
1859	5/9/2006 Bioarray News article		ID, 402, 403, 802	AV, R, HE, NH
1860	Affymetrix document "Illumina competitive positioning"	AVI_55292-99	402, 403	R
1861	Affymetrix document entitled "Illumina competitive positioning: Technical arguments for expression"	AVI_55309-10	402, 403	R
1862	Illumina - Competitive Review 2/10/2004	AVI_55595-618	402, 403	R
1863	Affymetrix document entitled "Competitive Price Analysis"	AVI_74053-056	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1864	Whole Genome SR Analysis: Positioning	AVI_78403-462	402, 403	R
1865	Strategic Priorities	AVI_69082-087	402, 403	R
1866	Competitor Overview	AVI_65230-235	402, 403	R
1867	Spreadsheet re "Lost Orders to Illumina"	AVI_56188-89	402, 403	R
1868	Spreadsheet re "Lost Orders to Illumina"	AVI_56475-76	402, 403	R
1869	Spreadsheet re "Lost Orders to Illumina"	AVI_56481-82	402, 403	R
1870				
1871	Affymetrix Spreadsheet	AVI_57137	402, 403, 802	R, HE, NH
1872	Affymetrix Spreadsheet	AVI_57707-08	402, 403, 802, MP, ID	R, HE, NH
1873	Affymetrix document entitled "Genotyping Products Positioning"	AVI_60780-826	402, 403	R
1874	Genotyping Wars Continue, 10/2006		NP, ID	AV
1875	Pacific Growth Equities, Illumina, Inc. 10/2006		NP, ID	AV
1876	Leerink Jaffray, "Growing Concerns Over Data Quality from 500K."	IAFP645432-37	402, 403, 802	R, HE, NH
1877	Email from Selby Re: "Preliminary Agenda - 14th International Genome Sequencing and Analysis Conference"	AVI_068828-829	402, 403	R
1878	Email from Raimond	AVI_056903-905	402, 403, 802	R, HE, NH
1879	Email from Raimond Re "FW: Max Lumke @ NHGRI has quote from Illumina"	AVI_058594-595	402, 403, 802	R, HE, NH
1880	Email from Nicholls Re: "FW: competitive activity genotyping"	AVI_072518-524	402, 403	R
1881	Email from Lane Re: "Baird/ILMN: Reports Strong Q1, Fundamentals Improving, Upgrading to Outperform"	AVI_056575-576	402, 403, 802	R, HE, NH
1882	Email from Fergus Re: "FW: Illumina purchase at	AVI_055927-928	402, 403, 802	R, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	UC Davis"			
1883	Email from Fergus "Re: Fw: Q2"	AVI_083897-898	402, 403	R
1884	Competitive Summit Meeting Minutes 5/17/05	AVI_073498-500	402, 403	R
1885	Email from Nicholls Re: "ILMN - competitive update"	AVI_068730-737	402, 403, 802	R, NH, HE
1886	Email from Fergus Re: "FW Parallele"	AVI_056529-531	402, 403	R
1887	Email from Siegel Re: "Debbie Nickerson and ILMN"	AVI_074367-369	402, 403, 802	R, NH, HE
1888	Email from Germann Re: "Quarter End"	AVI_080476-477	402, 403	R
1889	Email from Marcus Re: "Myriad Genetics"	AVI_064118-119	402, 403, 802	R, NH, HE
1890	Email from Raimond Re: "500K positioning slides"	AVI_063045-046	402, 403	R
1891	Email from Yap Re: "***FINAL PRODUCT PROFILES & CHOICE MATRICES FOR YOUR SIGN OFF TODAY!***"	AVI_056095-096	402, 403, 802	R, NH, HE
1892	Email from Affymetrix sales representative, June 25, 2004	AVI_064192-194	402, 403, 802	R, NH, HE
1893	Email from Affymetrix sales representative, September 13, 2004	AVI_078668-675	402, 403, 802	R, NH, HE
1894	Email from Affymetrix re Mendel Arrays Sets	AVI_177390-392	402, 403	R
1895	Email from Affymetrix re 500K chips, September 28, 2005	AVI_132679-680	402, 403	R
1896	Affymetix spreadsheet	AVI_201588-591	MP, 402, 403	R
1897	Affymetrix document re "Life Sciences Research Market"	AVI_068794-815	402, 403	R
1898	Affymetrix document entitled "Illumina Sales Role Play"	AVI_074046-48	402, 403	R
1899	Illumina document entitled "Gene Expression"	IAFP540473-513	402, 403, 802	R, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1900	Affymetrix e-mails, 5/27/04	AVI_82152-54	402, 403, 802	R, HE, NH
1901	Affymetrix emails, 9/22/04	AVI_89157-58	ID, MP, 402, 403	R
1902	Affymetrix emails, 1/11/05	AVI_78505-11	402, 403, 802	R, HE, NH
1903	10/5/05 Affymetrix press release "Wellcome Trust Case Control Consortium Partners With Perlegen and Affymetrix to Search for Genetic Origins of Ten Complex Diseases"		402, 403, 802	R, HE, NH
1904	Affymetrix emails, 9/18/04	AVI_80745-46	402, 403, 802	R, HE, NH
1905	Affymetrix emails re "Illumina info very sensitive," 11/27/02	AVI_64460-61	402, 403, 802	R, HE, NH
1906	Affymetrix emails re "10K opportunities," 3/18/03	AVI_56566-69	402, 403, 802	R, HE, NH
1907	Affymetrix emails re "10K opportunities"	AVI_64472-76	402, 403, 802	R, HE, NH
1908	Affymetrix emails re "Illumina at JHU," 6/30/03	AVI_63696-98	402, 403, 802	R, HE, NH
1909	Affymetrix emails re "Media FYI: John Hopkins," 8/29/03	AVI_63987-95	402, 403, 802	R, HE, NH
1910	Affymetrix emails re "Nakamura & ParAllele vs. Illumina," 10/27/03	AVI_64512	402, 403, 802	R, HE, NH
1911	Affymetrix emails re "Nakamura & ParAllele vs. Illumina," 10/27/03	AVI_64519-23	402, 403, 802	R, HE, NH
1912	Affymetrix emails re "The Nakamura lab," 11/7/03	AVI_64532-33	402, 403, 802	R, HE, NH
1913	Affymetrix emails re "MSKCC Genotyping -- Confidential INFO -- DO NOT CONTACT MSKCC," 11/25/03	AVI_64070-75	402, 403, 802	R, HE, NH
1914	Affymetrix emails re "Galileo visit 12/3," 11/25/02	AVI_62916	402, 403	R
1915	Affymetrix emails re "Call with Galileo tomorrow morning," 11/25/03	AVI_58437-39	402, 403, 802	R, HE, NH
1916	Affymetrix emails re "Galileo conference call for 11/26/03"	AVI_63625-26	402, 403	R

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1917	Affymetrix emails re "Hooper," 12/1/03	AVI_58168-69	402, 403, 802	R, HE, NH
1918	Affymetrix emails re "Hooper," 12/3/03	AVI_64598-601	402, 403, 802	R, HE, NH
1919	Affymetrix's emails re "Galileo Postmortem," 12/4/03	AVI_62914-15	402, 403	R
1920				
1921	Affymetrix emails re "Illumina competitive positioning," 12/7/03	AVI_63739-40	402, 403	R
1922	Affymetrix emails re "MS linkage redo," 1/13/2004	AVI_64014-18	402, 403, 802	R, HE, NH
1923	Affymetrix emails re "Parallele oppo?," 12/23/2003	AVI_81633-34	402, 403, 802	R, HE, NH
1924	Affymetrix emails re "Thoughts on ILMN announcement," 1/14/2004	AVI_82228-32	402, 403, 802	R, HE, NH
1925	Illumina emails re "Duke," 4/19/04	IAFP598827-29	402, 403, 802	R, HE, NH
1926	Illumina emails re "Email from Bob Millikan," 4/9/2004	IAFP555009-010	402, 403, 802	R, HE, NH
1927	Illumina emails re "Affy spreading lies," 4/15/04	IAFP567057-58	402, 403, 802	R, HE, NH
1928	Affymetrix emails re "Competitive situation!," 5/3/04	AVI_56588-90	402, 403, 802	R, HE, NH
1929	Affymetrix emails re "Illumina pricing," 5/5/04	AVI_89121-23	402, 403	R
1930	Affymetrix emails re "John Todd Summary," 5/6/04	AVI_82150-51	402, 403, 802	R, HE, NH
1931	Affymetrix emails re "Illumina purchase at UC Davis," 5/12/04	AVI_56231-32	402, 403, 802	R, HE, NH
1932	Affymetrix emails re "Strategic help needed," 5/14/04	AVI_82353-54	402, 403	R
1933				
1934	Illumina emails re "More info," 6/10/04	IAFP640174-76	402, 403, 802	R, HE, NH
1935	Affymetrix emails re "Martyn Smith doc," 5/6/04	AVI_55933-36	402, 403, 802, MD	R, HE, NH, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1936	Affymetrix document entitled "Opportunity/Threat outline: UC Berkeley, School of Public Health 3/12/2004"	AVI_55868-69	402, 403, 802	R, HE, NH
1937	Affymetrix emails re "Illumina purchase at UC Davis" dated 5/11/04	AVI_85323-24	402, 403, 802	R, HE, NH
1938	Affymetrix emails re "Lost sale," 6/18/04	AVI_64769-81	402, 403, 802	R, HE, NH
1939	Affymetrix emails re "Quarter end," 6/18/04	AVI_80476-77	402, 403	R
1940	Affymetrix emails re "John Todd -- big opportunities"	AVI_64234-36	402, 403, 802	R, NH, HE
1941	Affymetrix emails re "Dr. Tashiro," 9/14/04	AVI_78600-05	402, 403, 802	R, NH, HE
1942	Affymetrix emails re "Dr. Tashiro proposal," 10/2/04	AVI_82180-81	402, 403, 802	R, NH, HE
1943	Affymetrix emails re "Dr. Tashiro," 1/11/05	AVI_78512-18	402, 403, 802	R, HE, NH
1944	Affymetrix emails re "Illumina," 10/20/04	AVI_82527-30	402, 403, 802	R, NH, HE
1945	Affymetrix emails re "500K TA," 10/27/04	AVI_81885-86	402, 403	R
1946	Affymetrix emails re "Illumina competitive overview," 11/9/04	AVI_57491-92	402, 403	R
1947	Affymetrix emails re "4c demand," 11/11/04	AVI_81821-23	402, 403, 802	R, HE, NH
1948	Affymetrix emails re "holding off ILMN -- HELP," 12/15/04	AVI_64985-86	402, 403, 802	R, HE, NH
1949	Affymetrix emails re "ILMN 360K panel," 2/9/05	AVI_57274-76	402, 403, 802	R, HE, NH
1950	Affymetrix emails re "ILMN earning report," 2/23/05	AVI_58753-54	402, 403, 802	R, HE, NH
1951	Illumina emails re "T-Gen Beadstation order 11284"	IAFP640173	402, 403, 802	R, HE, NH
1952	Illumina document entitled "Leading Edge," 4/05	IAFP541080-104	MP, 402, 403, 802	R, HE, NH
1953	Illumina document entitled "Whole Genome Expression: Market Overview and Strategy"	IAFP543950-89	MP, 402, 403, 802	R, HE, NH

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1954	Affymetrix document entitled "2002 Marketing Plan Version 4.0"	AVI_87891-46	402, 403, 105	R, AI
1955	Affymetrix document entitled "Pricing/Selling Opportunities -- Data Collected end of May 2004"	AVI_65252-55	402, 403	R
1956	Affymetrix document entitled "Analysis of the North American Spotted Microarray Market, November 19, 2002"	AVI_74918-97	402, 403, 802	R, NH, HE
1957	Affymetrix document entitled "2004 Brand Attitudes and Awareness Study: Focus on DNA Analysis Market"	AVI_82570-644	402, 403	R
1958				
1959	7-24-02 Affymetrix Earnings Call Transcript	IAFP645122-33	402, 403, 802	R, NH, HE
1960	10-23-02 Affymetrix Earnings Call Transcript	IAFP645134-50	402, 403, 802	R, NH, HE
1961	1-29-03 Affymetrix Earnings Call Transcript	IAFP645151-65	402, 403, 802	R, NH, HE
1962	1-30-03 Affymetrix to Discuss Clinical Genomics Transcript	IAFP645166-74	402, 403, 802	R, NH, HE
1963	4-23-03 Affymetrix Earnings Call Transcript	IAFP645175-90	402, 403, 802	R, NH, HE
1964	7-23-03 Affymetrix Earnings Call Transcript	IAFP645191-206	402, 403, 802	R, NH, HE
1965	10-22-03 Affymetrix Earnings Call Transcript	IAFP645207-19	402, 403, 802	R, NH, HE
1966	1-12-04 Affymetrix JPMorgan 22 nd Annual Healthcare Conference Transcript	IAFP645220-25	402, 403, 802	R, NH, HE
1967	1-28-04 Affymetrix Earnings Call Transcript	IAFP645226-43	402, 403, 802	R, NH, HE
1968	4-21-04 Affymetrix Earnings Call Transcript	IAFP645244-58	402, 403, 802	R, NH, HE
1969	7-21-04 Affymetrix Earnings Call Transcript	IAFP645259-71	402, 403, 802	R, NH, HE
1970	1-11-05 Affymetrix JPMorgan 23 rd Annual Healthcare Conference Transcript	IAFP645272-77	402, 403, 802	R, NH, HE
1971	1-26-05 Affymetrix Earnings Call Transcript	IAFP613234-46	402, 403, 802	R, NH, HE

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1972	1-27-05 Affymetrix at Piper Jaffray Healthcare Conference Transcript	IAFP645278-85	402, 403, 802	R, NH, HE
1973	3-31-05 Affymetrix at Lehman Brothers Global Healthcare Conference Transcript	IAFP645286-92	402, 403, 802	R, NH, HE
1974	4-21-05 Affymetrix Earnings Call Transcript	IAFP613116-33	402, 403, 802	R, NH, HE
1975	5-10-05 Affymetrix at Robert W. Baird & Co., Inc. Growth Stock Conference Transcript	IAFP645293-301	402, 403, 802	R, NH, HE
1976	5-31-05 Affymetrix Signs Agreement to Acquire ParAllele BioScience	IAFP645302-16	402, 403, 802	R, NH, HE
1977	6-06-05 Affymetrix at Pacific Growth Equities 2005 Life Sciences Growth Conference Transcript	IAFP645317-24	402, 403, 802	R, NH, HE
1978	6-14-05 Affymetrix Earnings Call Transcript	IAFP588707-18	402, 403, 802	R, NH, HE
1979	7-21-05 Affymetrix Earnings Call Transcript	IAFP645325-46	402, 403, 802	R, NH, HE
1980	9-27-05 Affymetrix Guidance Announcement Transcript	IAFP658954-64	402, 403, 802	R, NH, HE
1981	10-20-05 Affymetrix Earnings Call Transcript	IAFP645358-81	402, 403, 802	R, NH, HE
1982	1-05-06 Affymetrix Guidance Announcement Transcript	IAFP658932-53	402, 403, 802	R, NH, HE
1983	4-20-06 Affymetrix Earnings Call Transcript	IAFP645448-70	402, 403, 802	R, NH, HE
1984	7-31-06 Affymetrix Earnings Call Transcript	IAFP64404-22	402, 403, 802	R, NH, HE
1985	09-12-06 Affymetrix at Bear Stearns 19 th Annual Healthcare Conference Transcript	IAFP658988-96	402, 403, 802	R, NH, HE
1986	10-25-06 Affymetrix Earnings Call Transcript	10-25-06 Affymetrix Earnings Call Transcript	402, 403, 802, NP, ID	R, NH, HE, AV
1987	Affymetrix 10-Q (11/9/06)	Affymetrix 10-Q (11/9/06)		
1988	Affymetrix 10-Q (8/3/06)	Affymetrix 10-Q (8/3/06)		
1989	Affymetrix 10-Q (5/10/06)	Affymetrix 10-Q (5/10/06)		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
1990	Affymetrix 10-Q (11/9/05)	AVI_126565-126621		
1991	Affymetrix 10-Q (8/9/05)	AVI_127461-127504		
1992	Affymetrix 10-Q (5/10/05)	AVI_127505-127460		
1993	Affymetrix 10-Q (3/16/05)	AVI_127275-127416		
1994	Affymetrix 10-Q (8/9/04)	Affymetrix 10-Q (8/9/04)		
1995	Affymetrix 10-Q (5/10/04)	Affymetrix 10-Q (5/10/04)		
1996	Affymetrix 10-Q (11/14/03)	AVI_126065-126124		
1997	Affymetrix 10-Q (8/14/03)	AVI_126125-126175		
1998	Affymetrix 10-Q (5/15/03)	AVI_126176-126387		
1999	Affymetrix 10-Q (11/14/02)	AVI_125536-125575		
2000	Affymetrix 10-Q (8/12/02)	AVI_125576-125615		
2001	Affymetrix 10-Q (5/15/02)	AVI_125616-125658		
2002	Affymetrix 10-Q (11/13/01)	AVI_125214-125221		
2003	Affymetrix 10-Q (8/13/01)	AVI_125222-125261		
2004	Affymetrix 10-Q (5/15/01)	AVI_125223-125272		
2005	Affymetrix 10-Q (11/14/00)	AVI_123962-123996		
2006	Affymetrix 10-Q (8/14/00)	AVI_123997-124025		
2007	Affymetrix 10-Q (5/15/00)	AVI_124026-124053		
2008	Affymetrix 10-K (8/3/06)	Affymetrix 10-K (8/3/06)		
2009	Affymetrix 10-K (3/9/06)	AVI_213606-123753		
2010	Affymetrix 10-K (3/16/05)	AVI_120189-120332		
2011	Affymetrix 10-K (3/15/04)	AVI_120061-120188		
2012	Affymetrix 10-K (3/31/03)	AVI_125958-126064		
2013	Affymetrix 10-K (3/29/02)	AVI_125480-125535		

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2014	Affymetrix 10-K (3/30/01)	AVI_119639-119739		
2015	Affymetrix 10-K (3/30/00)	AVI_119424-119638		
2016	Affymetrix's Responses to Illumina's First Set of Interrogatories		402, 403, ID, MD	R, SD
2017	Affymetrix's Supplemental Responses to Illumina's First Set of Interrogatories		402, 403, ID, MD	R, SD
2018	Affymetrix's Second Supplemental Responses to Illumina's First Set of Interrogatories		402, 403, ID, MD	R, SD
2019	Affymetrix's Responses to Illumina's Second Set of Interrogatories		402, 403, ID, MD	R, SD
2020	Affymetrix's Supplemental Responses to Illumina's Second Set of Interrogatories		402, 403, ID, MD	R, SD
2021	Affymetrix's Second Supplemental Responses to Illumina's Second Set of Interrogatories		402, 403, ID, MD	R, SD
2022	Affymetrix's Responses to Illumina's Third Set of Interrogatories		402, 403, ID, MD	R, SD
2023	Affymetrix's Responses to Illumina's Fourth Set of Interrogatories		402, 403, ID, MD	R, SD
2024	Affymetrix's Supplemental Responses to Illumina's Fourth Set of Interrogatories		402, 403, ID, MD	R, SD
2025	Affymetrix's Responses to Illumina's Fifth Set of Interrogatories		402, 403, ID, MD	R, SD
2026	Affymetrix's Supplemental Responses to Illumina's Fifth Set of Interrogatories		402, 403, ID, MD	R, SD
2027	Affymetrix's Responses to Illumina's First Set of Requests for Production		402, 403, ID, MD	R, SD
2028	Affymetrix's Responses to Illumina's Second Set of Requests for Production		402, 403, ID, MD	R, SD
2029	Affymetrix's Responses to Illumina's Third Set of		402, 403, ID, MD	R, SD

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	Requests for Production			
2030	Affymetrix's Responses to Illumina's First Set of Requests for Admission		402, 403, ID, MD	R, SD
2031	Affymetrix's Responses to Illumina's Second Set of Requests for Admission		402, 403, ID, MD	R, SD
2032				
2033	Expert report(s) of Hubert Koster, Ph.d, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)		802	NH
2034	Expert report(s) of Robin Felder, Ph.d., submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)		802	NH
2035	Expert report(s) of Matthew Lynde, Ph.d, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)		802	NH
2036	Expert report(s) of George Gould, submitted in <i>Affymetrix, Inc. v. Illumina, Inc.</i> , CA 04-901-JFF (D. Del.)		802	NH
2037	10/28/91 Beckman letter re Affymetrix and Human Genome III meeting	IAFP6604-05	402, 403, 802	R, NH, HE
2038	10/24/91 Gasin letter re Meeting/Affymetrix Research	IAFP7335-36	402, 403, 802	R, NH, HE
2039	12/8/98 Foder Document	AFF-HYS15254-57	402, 403, 802	R, NH, HE
2040	Affymetrix Initial Disclosures HySeq. case	AFF-HYS15135-42	402, 403, 802	R, NH, HE
2041	10/17/97 Affymetrix S-3 Form	AVI121307-460	402, 403	R
2042	Wagner Assignment Document	AG137-38	402, 403, 802, MD	R, NH, HE, SD
2043				
2044	US Patent App. "Methods for Processing Multiple Biological Chip Assays"	IAFP33-73		

EXHIBIT 8

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2045	Affymetrix's Markman Brief for HySeq litigation	AFFY-HYS27714-31	402, 403, 802	R, NH, HE
2046	US Patent No. 5,639,611		402, 403, NP	R, AV
2047	Affymetrix's Opposition to Isis EPO 0373,203	IAFP 5341-5434	402, 403, 802	R, NH, HE
2048	Declaration of Paul Silverman in Affymetrix/Synteni litigation	IAFP5982-84	402, 403, 802	R, NH, HE
2049	7/1/92 Letter from J. Tripp to R. Lipshutz of Wagner	AG464-65	402, 403, 802, MD	R, NH, HE, SD
2050	Copyright Assignment	AG865-69	402, 403, 802	R, NH, HE
2051	Hyseq's reply brief	AFFY-HYS11333-35	402, 403, 802	R, HE, NH
2052	12/6/91 Wagner Memorandum	AG1215-18	402, 403, 802	R, NH, HE
2053	2/14/92 Quote from Wagner to Affymetrix	AG471-72	402, 403, 802	R, NH, HE
2054	Sentrix Universal-96 Array Matrix (physical sample)		NP, ID, 901	AV, A
2055	Sentrix Universal-16 BeadChip (physical sample)		NP, ID, 901	AV, A
2056	Sentrix Human-1 Genotyping BeadChip (physical sample)		NP, ID, 901	AV, A
2057	Sentrix Human-6 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2058	Sentrix HumanRef-8 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2059	Sentrix Mouse-6 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2060	Sentrix MouseRef-8 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2061	Sentrix Human Sampler-16 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2062	Sentrix Human Sampler-96 Expression Array Matrix (physical sample)		NP, ID, 901	AV, A
2063	Sentrix HumanTox-16 Expression BeadChip		NP, ID, 901	AV, A

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	(physical sample)			
2064	Mouse Sampler-16 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2065	Sentrix Mouse-96 Expression Array Matrix (physical sample)		NP, ID, 901	AV, A
2066	Sentrix Arabidopsis Sampler-16 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2067	Sentrix Arabidopsis-96 Expression Array Matrix (physical sample)		NP, ID, 901	AV, A
2068	Sentrix Custom-16 Expression BeadChip (physical sample)		NP, ID, 901	AV, A
2069	Sentrix Custom-96 Expression Array Matrix (physical sample)		NP, ID, 901	AV, A
2070	Linkage IVb Panel (physical sample)		NP, ID, 901	AV, A
2071	MHC Panel Set (physical sample)		NP, ID, 901	AV, A
2072	Illumina's Beadchip device without beads (physical sample)		NP, ID, 901	AV, A
2073	Illumina's Beadchip device with beads (physical sample)		NP, ID, 901	AV, A
2074	Physical sample of product packaging		NP, ID	AV
2075	Physical sample of product packaging		NP, ID	AV
2076	Physical sample of product packaging		NP, ID	AV
2077	Physical sample of product packaging		NP, ID	AV
2078	Physical sample of product packaging		NP, ID	AV
2079	Physical sample of product packaging		NP, ID	AV
2080	Physical sample of product packaging		NP, ID	AV
2081	Physical sample of product packaging		NP, ID	AV

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Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2082	Physical sample of product packaging		NP, ID	AV
2083	Physical sample of product packaging		NP, ID	AV
2084	Physical sample of product packaging		NP, ID	AV
2085	Physical sample of product packaging		NP, ID	AV
2086	Physical sample of product packaging		NP, ID	AV
2087	Physical sample of product packaging		NP, ID	AV
2088	Physical sample of product packaging		NP, ID	AV
2089	Physical sample of product packaging		NP, ID	AV
2090	Physical sample of product packaging		NP, ID	AV
2091	Physical sample of product packaging		NP, ID	AV
2092	Physical sample of product packaging		NP, ID	AV
2093	Physical sample of product packaging		NP, ID	AV
2094				
2095	Physical sample of Illumina's Sentrix Array Matrix hybridization chamber	N/A	NP, ID, 901	AV, A
2096	Photographs of Illumina's Sentrix Array Matrix hybridization chamber	ILPRD14, 16-20, 24		
2097				
2098	Physical sample of Illumina's Beadchip hybridization chamber		NP, ID, 901	AV, A
2099	Photographs of Illumina's Beadchip hybridization chamber	ILPRD5-7, 9, 10, 12		
2100				
2101				
2102				

EXHIBIT 8

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2103	Gordon Research Conferences, 1999 Summer and Fall Meetings. Science 1999; 283, Cover, 1220, 1356.		NP, 402, 403, 802, MP	AV, R, HE, NH
2104	Simon-Sanchez, et al. Genome-wide SR assay reveals structural genomic variation, extended homozygosity and cell-line induced alterations in normal individuals. Human Molecular Genetics 2007; 16: 1-14.		NP, 402, 403, 802	AV, R, HE, NH
2105	Duerr, et. al. A Genome-Wide Association Study Identifies IL23R as an Inflammatory Bowel Disease Gene. Science 2006; 314:1461-1463.		NP, 402, 403, 802, ID, 901	AV, R, HE, NH, A
2106	Plaque: North American Drug Discovery Technologies Product Innovation of the Year Award, 2006.		NP, 402, 403, 802, ID, 901	AV, R, HE, NH, A
2107	Plaque: Cover of Science 2006; 283.		NP, 402, 403, 802, 701	AV, R, HE, NH, O
2108	Frost & Sullivan, 2006 North American Drug Discovery Technologies Product Innovation of the Year Award; Award Recipient: Illumina, Inc. (4 pp.)		NP, 402, 403, 802, 701	AV, R, HE, NH, O
2109	The International HapMap Consortium. The International HapMap Project. Nature 2003; 426: 789-796.		NP, 402, 403, 802	AV, R, HE, NH
2110	The International HapMap Consortium. A Haplotype Map of the Human Genome. Nature 2005; 437:1299-1320.		NP, 402, 403, 802	AV, R, HE, NH
2111	Wadman M. The Chips Are Down. Nature 2006;444:256-257.		NP, 402, 403, 802	AV, R, HE, NH
2112	License Agreement between Affymetrix, Inc. and PerkinElmer Inc. (DX 531)	AVI_203223-54	402, 403	R
2113	Alan Sherr Email re Correction.	AVI_203692	402, 403, 701	R, O
2114	Common Terms Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29,	AVI_208281-304	402, 403	R

EXHIBIT 8

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
	2003			
2115	Instrument and Chip Supply Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208305-31	402, 403	R
2116	Instrument Agency Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208332-52	402, 403	R
2117	Diagnostic Product and Instrument Agency Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208353-67	402, 403	R
2118	Standstill Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208368-73	402, 403	R
2119	Research & Development Collaboration Agreement between F. Hoffmann-LaRoche and Affymetrix, Inc. dated January 29, 2003	AVI_208374-89	402, 403	R
2120	Beads (physical sample)		NP, ID, 901	AV, A
2121	Beads with oligos (physical sample)		NP, ID, 901	AV, A
2122	Glass fiber bundles without beads (physical sample)		NP, ID, 901	AV, A
2123	Glass fiber bundles with beads without oligos (physical sample)		NP, ID, 901	AV, A
2124	Glass fiber bundles with beads with oligos (physical sample)		NP, ID, 901	AV, A
2125	Illumina's Sentrix Array Matrix without beads (physical sample)		NP, ID, 901	AV, A
2126	Illumina's Sentrix Array Matrix with beads (physical sample)		NP, ID, 901	AV, A
2127	Affymetrix's Human Genome U133A 2.0 Array (physical sample)		NP, 402, 403, 901	AV, R, A

EXHIBIT 8

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2128	Affymetrix's Human Genome Focus Array (physical sample)		NP, 402, 403, 901	AV, R, A
2129	Affymetrix's GeneChip Human Mapping 100K Array (physical sample)		NP, 402, 403, 901	AV, R, A
2130	Affymetrix's GeneChip Human Mapping 500K Array (physical sample)		NP, 402, 403, 901	AV, R, A
2131	Affymetrix's GeneChip Human Mapping 10K Array (physical sample)		NP, 402, 403, 901	AV, R, A
2132	Affymetrix's GeneChip Custom 1.5 (physical sample)		NP, 402, 403, 901	AV, R, A
2133	Affymetrix's Universal 3K Tag Array (physical sample)		NP, 402, 403, 901	AV, R, A
2134	E-mail re Array Patent List	AVI_202266	402, 403, 802	R, HE, NH
2135	Email re Revised Term Sheet	AVI_202242	402, 403, 802	R, HE, NH
2136	First Amendment to License Agreement	AVI_208088-93	402, 403	R
2137	Email re AFFY Questions	AVI_204293	402, 403, 802	R, HE, NH
2138	Amendment 4 to the License Agreement between Affymetrix, Inc. and MWG-Biotech AG	AVI_203595-6	402, 403	R
2139	Amendment 5 to the License Agreement between Affymetrix, Inc. and MWG-Biotech AG	AVI_202780-1	402, 403	R
2140	Meeting Agenda	AVI_203597	402, 403, 802	R, HE, NH
2141	Email re Meeting Follow-up	AVI_202747	402, 403, 802	R, HE, NH
2142	Email re Document, etc.	AVI_203166-67	402, 403, 802	R, HE, NH
2143	Document entitled "Affymetrix Conference Call"	AVI_203295	402, 403, 802	R, HE, NH
2144	Email re Spectral Genomics Negotiation Version of Revised Terms and spreadsheet	AVI_202985-6	402, 403, 802	R, HE, NH
2145	Email re GMS	AVI_203070-72	402, 403, 802	R, HE, NH

EXHIBIT 8

Trial Ex. No.	Document	Bates Range	Affymetrix's Objections	Illumina's Response to Affymetrix's Objection
2146	U.S. Patent No. 4,263,504 (Thomas)		NP, 402, 403	AV, R

EXHIBIT 8

Key to Affymetrix's Objections to Illumina's Proposed Trial Exhibits

Affymetrix reserves the right to add to or amend its objections to Illumina's proposed trial exhibits depending on how the Court divides the issues for trial and on the outcome of any motions *in limine*.

- 402 All or part of proposed exhibit is objected to under FRE 402 because it is not relevant
- 403 All or part of proposed exhibit is objected to under FRE 403 because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence
- 408 All or part of proposed exhibit is objected to under FRE 408
- 701 All or part of proposed exhibit is objected to under FRE 701 because it is inadmissible opinion testimony by a lay witness
- 802 All or part of proposed exhibit is objected to under FRE 802 or 805 as inadmissible hearsay
- 901 All or part of proposed exhibit is objected to under FRE 901 as lacking authenticity or identification
- 105 All or part of proposed exhibit is objected to under FRE 105 as having only limited admissibility
- 602 All or part of proposed exhibit is objected to under FRE 602 and 702-705 for lack of foundation
- ID Insufficient or incorrect description of proposed exhibit / testimony – all objections are reserved
- MD All or part of proposed exhibit is objected to because it consists of multiple documents
- MP All or part of proposed exhibit is objected to because it is incomplete or missing pages
- R All or part of proposed exhibit is objected to because it was not produced in discovery
- Priv All or part of proposed exhibit is objected to because it is subject to attorney-client privilege or attorney work product

EXHIBIT 8**Key to Illumina's Responses To Affymetrix's Objections to Illumina's Proposed Trial Exhibits**

Illumina reserves the right to add to or amend its responses to Affymetrix's objections to Illumina's proposed trial exhibits depending on how the Court divides the issues for trial and on the outcome of any motions *in limine*.

Designation	Description
A	Authentication. All or part of the proposed exhibit will be authenticated through appropriate live or deposition testimony under FRE 104, or is self authenticating pursuant to FRE 902.
AI	Admissible For Illumina. All or part of the proposed exhibit is admissible for purposes that Illumina intends to use the document pursuant to FRE 105.
AV	Publicly Available. All or part of the proposed exhibit is publicly available or otherwise available to Affymetrix.
HE	Hearsay Exception. All or part of the proposed exhibit is not excluded by the hearsay rule, and admissible under the hearsay exceptions pursuant to FRE 803, 804 and/or 807.
NH	Non-Hearsay. All or part of the proposed exhibit is not hearsay under FRE 801 because the statement is not being offered in evidence to prove the truth of the matter asserted, is a prior statement by witness, and / or is an admission by a party-opponent.
PI	Pending Issue. All or part of the proposed exhibit was seized during the deposition and a pending motion is before the Court. This proposed exhibit is non-privileged.
O	Opinion on Ultimate Issue. All or part of the proposed exhibit is not opinion testimony by a lay witness, and/or the exhibit reflects testimony in the form of an opinion or inference that is otherwise admissible and is not objectionable because it embraces an ultimate issue to be decided by the trier of fact pursuant to FRE 704.
PK	Personal Knowledge. The author of all or part of the proposed exhibit has personal knowledge discussed in the writing or foundation will be laid at trial through appropriate live or deposition testimony under FRE 602.
R	Relevant. All or part of the proposed exhibit is relevant under FRE 401, and its probative value is not substantially outweighed by any unfair prejudice.
SD	Single Document. All or part of the proposed exhibit is a single document or part of a single document, but to the extent it is not, Affymetrix cites no Federal Rule of Evidence that supports exclusion.

EXHIBIT 8

Designation	Description
SU	Summaries. All or part of the proposed exhibit contains contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court and is presented in the form of a chart, summary, or calculation pursuant to FRE 1006. The originals, or duplicates, are publicly available or otherwise available to Affymetrix.

EXHIBIT 9

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
1	Certified US Patent No. 5,545,531		08/13/1996	copy at AVI_038924	AVI_038938					
2	Certified US Patent No. 5,795,716		08/18/1998	copy at AVI_039650	AVI_039699					
3	Certified US Patent No. 6,355,432		03/12/2002	copy at AVI_043790	AVI_043844					
4	Certified US Patent No. 6,399,365		06/04/2002	copy at AVI_044227	AVI_044286					
5	Certified US Patent No. 6,646,243		11/11/2003	copy at AVI_047056	AVI_047106					
6	File History for US Patent No. 5,545,531			AVI_001864	AVI_001984					
7	File History for US Patent No. 5,795,716			AVI_000001	AVI_000429					
8	File History for US Patent No. 6,355,432			AVI_001341	AVI_001863					
9	File History for US Patent No. 6,399,365			AVI_001051	AVI_001340					
10	File History for US Patent No. 6,646,243			AVI_000731	AVI_001985					
11	Illumina BeadLab System Manual Rev. E	PX 201	09/02/2004	IAFP00010319	IAFP00011208					
12	Illumina BeadArray Reader User Guide Rev. A	PX 202	08/18/2004	IAFP00011520	IAFP00011615					
13	Illumina BeadStation 500X Gene Expression System Rev. B	PX 266	10/15/2004	IAFP00010209	IAFP00010268					
14	Illumina Gene Expression on Sentrix Arrays Direct Hybridization System Manual - Array Matrix Rev. B	PX 271	11/14/2003	IAFP00632951	IAFP00633090					
15	Illumina Genotyping System Manual Rev. B	PX 603	00/00/2003	IAFP00472418	IAFP00473195					
16	Illumina Infinium I Assay System Manual Rev. B	PX 605	11/04/2005	IAFP00642663	IAFP00643108					
17	Illumina Infinium Assay System Manual Rev. A - Errata	PX 606	00/00/0000	IAFP00643109	IAFP00643112					

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
18	Illumina Gene Expression on Sentrix Arrays - DASL Assay System Manual Rev. A	PX 609	01/26/2005	IAFP00642477	IAFP00642662					
19	Illumina BeadStation 500G System Manual Rev. B	PX 614	04/04/2005	IAFP00642129	IAFP00642476					
20	Illumina Hybridization Oven Operating Instructions Model 5420 with BeadChip Hyb Wheel		00/00/2004	IAFP00010277	IAFP00010316					
21	Illumina BeadStudio X User Guide		08/27/2004	IAFP00543653	IAFP00543804					
22	Illumina Sherlock 1000 Array Scanning System User Guide		00/00/2002	IAFP00569671	IAFP00569729					
23	Illumina BeadLab System Site & Facility Pre-Installation Guide		00/00/2003	IAFP00590786	IAFP00590821					
24	Information for Topic 3	PX 9	00/00/0000			S	1006			
25	Illumina Catalog List 2004	PX 10	02/21/2005	IAFP00496472	IAFP00496526					
26	Employee Time Charged by Project	PX 14	00/00/2001	IAFP00022393	IAFP00022436	F, R, P	401(f), 401(a), 403(prob)			
27	Employee Time Charged by Project	PX 15	00/00/2002	IAFP00022437	IAFP00022474	F, R, P	401(f), 401(a), 403(prob)			
28	Employee Time Charged by Project	PX 16	00/00/2003	IAFP00022475	IAFP00022512	F, R, P	401(f), 401(a), 403(prob)			
29	Notebook No. 00023 Issued to Jian-Bing Fan	PX 31	06/21/1999	IAFP00469703	IAFP00469941	R, P	401(a), 403(prob)			
30	Notebook No. 00037 Issued to Jian-Bing Fan	PX 32	11/15/1999	IAFP00584093	IAFP00584290	R, P	401(a), 403(prob)			
31	Notebook No. 00065 Issued to Jian-Bing Fan	PX 33	04/04/2000	IAFP00584291	IAFP00584347	R, P	401(a), 403(prob)			
32	Email re: Target Quality Controls	PX 35	04/09/2002	IAFP00556298	IAFP00556300	R, P	401(a), 403(prob)			
33	Highly Parallel SNP Genotyping	PX 37	00/00/2003	IAFP00583892	IAFP00583901					
34	BeadArray-Based Solutions for Enabling the Promise of Pharmacogenomics	PX 39	10/00/2005							

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
35	Email re: RE: Chip Data Analysis Question	PX 43	04/01/1999	IAFP00589242	IAFP00589242	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
36	Email re: tag sequences	PX 44	04/25/2000	IAFP00560600	IAFP00560600	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
37	Email re: RE: PM over MM with Affy	PX 45	05/14/2002	IAFP00556078	IAFP00556078	F, R, P	401(f), 401(a), 403(prob)			
38	Email re: probe selection paper from Affymetrix	PX 46	12/18/2003	IAFP00555360	IAFP00555360	F, R, P	401(f), 401(a), 403(prob)			
39	Probe selection for high-density oligonucleotide arrays	PX 47	09/30/2003	IAFP00555361	IAFP00555366	F, R, P	401(f), 401(a), 403(prob)			
40	Parallel Genotyping of Human SNPs Using Generic High-density Oligonucleotide Tag Arrays	PX 48	00/00/0000	IAFP00558370	IAFP00558377	F, R, P	401(f), 401(a), 403(prob)			
41	Performance Review Self Assessment for Kevin L. Gunderson	PX 50	12/03/1997	AVI_134236	AVI_134237	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
42	Employee Time Charged by Project	PX 55	00/00/2004	IAFP00022513	IAFP00022566	F, P, R	401(f), 403(prob), 401(a)			
43	Notebook No. 00046 Issued to Kevin Gunderson	PX 57	01/19/2000	IAFP00468538	IAFP00468734	R, P	401(a), 403(prob)			
44	Notebook No. 00113 Issued to Kevin Gunderson	PX 58	10/19/2000	IAFP00468735	IAFP00468930	R, P	401(a), 403(prob)			
45	Grant Application for Representational analysis of DNA copy number / methylation	PX 61	12/02/2002	IAFP00571878	IAFP00571905	F, R, P	401(f), 401(a), 403(prob)			
46	Illumina Project Eureka Concept Plan	PX 63	10/06/2003	IAFP00548363	IAFP00548376	F, R, P	401(f), 401(a), 403(prob)			
47	Illumina PowerPoint Presentation - Infinium Assay Whole Genome Genotyping	PX 67	00/00/0000	IAFP00616484	IAFP00616518	F, R, P	401(f), 401(a), 403(prob)			
48	Whole Genome Genotyping Update	PX 68	07/09/2003	IAFP00554653	IAFP00554663	F, R, P	401(f), 401(a), 403(prob)			
49	Randomly-Assembled BeadArrays: Genomic and Proteomic Applications	PX 69	00/00/0000	IAFP00554113	IAFP00554187	F, R, P	401(f), 401(a), 403(prob)			
50	Email re: FYI: Affy's genotyping algorithms	PX 71	01/07/2004	IAFP00517099	IAFP00517099	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
51	Email re: Annotation files for Affy HG U133P2.0	PX 74	11/11/2004	IAFP00547244	IAFP00547244	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
52	List of nGenetics Inventions and Original Works of Authorship	PX 83	00/00/1998	IAFP00571419	IAFP00571419	A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
53	Illumina PowerPoint Presentation - CyVera Transaction	PX 163	10/06/2004	IAFP00590112	IAFP00590127	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
54	Illumina PowerPoint Presentation - From Whole Genome to Targeted Analysis: An Integrated Platform for Genotyping and Gene Expression	PX 170	00/00/0000	IAFP00546077	IAFP00546108	F, R, P	401(f), 401(a), 403(prob)			
55	Illumina PowerPoint Presentation - Leading Edge Sales Meeting	PX 171	04/00/2005	IAFP00541260	IAFP00541444	F, R, P	401(f), 401(a), 403(prob)			
56	Laboratory Notebook No. 00099 issued to Francisco Garcia	PX 184	08/21/2000	IAFP00626908	IAFP00626960	R, P	401(a), 403(prob)			
57	GenCall Version	PX 185	00/00/0000	IAFP00550588	IAFP00550616					
58	Illumina Signs Genotyping Services Agreement with Investigators at Boston University	PX 186	00/00/0000	AVI_141814	AVI_141814					
59	Illumina Signs Genotyping Services Agreement with GlaxoSmithKline	PX 187	00/00/0000	AVI_141821	AVI_141821					
60	Illumina Signs Genotyping Services Agreement with Johns Hopkins Medical University	PX 188	00/00/0000	AVI_141816	AVI_141816					
61	Large-Scale SNP Genotyping on Random Arrays	PX 190	05/03/2002	IAFP00610110	IAFP00610188	F, R, P	401(f), 401(a), 403(prob)			
62	Illumina PowerPoint Presentation - Genotyping Bead Arrays GenCall (Genotype Caller Program)	PX 191	11/07/2001	IAFP00507719	IAFP00507773	F, R, P	401(f), 401(a), 403(prob)			
63	Illumina Atlas - Development Phase Design Verification Testing Peer Technology Review Pre-read	PX 192	02/04/2003	IAFP00590053	IAFP00590107	F, R, P	401(f), 401(a), 403(prob)			
64	BeadStation 500G GenCall - Creating Clusters & Calling Genotypes	PX 200	00/00/0000	IAFP00009250	IAFP00009296	F, R, P	401(f), 401(a), 403(prob)			
65	Email re: RE: Affy BeadChip misregistered image	PX 203	08/25/2003	IAFP00550894	IAFP00550894	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
66	Email re: LOH and arrayCGH etc	PX 204	07/08/2005	IAFP00581675	IAFP00581676	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
67	Email re: affy_spike_info.xls	PX 205	06/11/2003	IAFP00556342	IAFP00556346	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
68	Email re: The age old question...	PX 206	05/03/2004	IAFP00552322	IAFP00552326	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
69	Self-Assembled Random Arrays: High-performance imaging and genomics applications on a high-density microarray platform	PX 247	00/00/0000	IAFP00532343	IAFP00532353					
70	Illumina PowerPoint Presentation - Mult-Sample Gene Expression: From whole genomes to focused gene sets; using fresh or fixed-	PX 267	00/00/0000	IAFP00496330	IAFP00496390	F, R, P	401(f), 401(a), 403(prob)			
71	Illumina Gene Expression Profiling - Gene Expression profiling on Multi-Array Sentrix BeadChips	PX 269	00/00/0000							
72	Illumina 16/96/384 Array Matrix Concept Plan Revision 0.5	PX 273	02/01/2000	IAFP00533196	IAFP00533205	F, R, P	401(f), 401(a), 403(prob)			
73	Email re: RE: important - please respond	PX 288	03/30/2004	IAFP00555540	IAFP00555542	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
74	Illumina Systems, Products and Services Catalog 2005	PX 296	10/03/2005	IAFP00640163	IAFP00640172					
75	Decoding Randomly Ordered DNA Arrays	PX 322	01/29/2005	AVI_118352	AVI_118359					
76	Email re: REVIEW new Genotyping Service Model	PX 323	05/14/2004	IAFP00583557	IAFP00583589	F, R, P	401(f), 401(a), 403(prob)			
77	Illumina PowerPoint Presentation - An Integrated Array Platform for Genetic Analysis	PX 335	00/00/0000	IAFP00585224	IAFP00585310	F, R, P	401(f), 401(a), 403(prob)			
78	Email re: FW: Update on 100k chip presentation in Affymetrix Workshop	PX 341	04/07/2004	IAFP00467591	IAFP00467591	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
79	Affymetrix Workshop HUGO	PX 342	04/07/2004	IAFP00467592	IAFP00467592	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
80	Encoding methods for combinatorial chemistry	PX 385	00/00/1997	AVI_201349	AVI_201355	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
81	Biographical Sketch of Mark Stephen Chee	PX 400	00/00/0000	IAFP00571411	IAFP00571412	A, F, H, R, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
82	Large-Scale Identification, Mapping, and Genotyping of Single-Nucleotide Polymorphisms in the Human Genome	PX 401	05/15/1998	AVI_003362	AVI_003367	H, R, P	801/803, 401(a), 403(prob)			
83	Expression monitoring by hybridization to high-density oligonucleotide arrays	PX 402	12/14/1996	IAFP00005705	IAFP00005710	H, R, P	801/803, 401(a), 403(prob)			
84	Accessing Genetic Information with High-Density DNA Arrays	PX 403	10/25/1996	AVI_002128	AVI_002133	H, R, P	801/803, 401(a), 403(prob)			
85	E-mail re: Lend me your ears	PX 407	07/01/1997	IAFP00634121	IAFP00634124	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
86	Illumina Website - History	PX 412	00/00/0000	AVI_141861	AVI_141861					
87	Background on Illumina	PX 413	00/00/0000	IAFP00567197	IAFP00567200	F, R, Inc, P	401(f), 801/803, 403(prob)			
88	Illumina Business Plan Outline	PX 415	00/00/0000	CHEE037630	CHEE037662	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
89	Email re: directions on merit evaluations and compensation for Illumina's employees	PX 416	06/16/1999	CHEE045899	CHEE045900	F, R, P	401(f), 401(a), 403(prob)			
90	Illumina Website - Management	PX 426	00/00/0000	AVI_141862	AVI_141866					
91	Illumina Atlas - Development Phase Design Verification Testing Peer Technology Review Pre-read	PX 427	02/04/2003	IAFP00639429	IAFP00639483	F, R, P	401(f), 401(a), 403(prob)			
92	Grant Application for Development of a Multi-State Decoding Framework	PX 429	04/01/2004	IAFP00595240	IAFP00595293	F, R, P	401(f), 401(a), 403(prob)			
93	Phase I Grant Application for Randomly Ordered DNA Arrays for SNP Genotyping	PX 430	08/14/1998	IAFP00572121	IAFP00572147	F, R, P	401(f), 401(a), 403(prob)			
94	Application for Continuation Grant for Randomly Ordered DNA Arrays for SNP Genotyping	PX 431	09/11/2000	IAFP00572190	IAFP00572204	F, R, P	401(f), 401(a), 403(prob)			
95	Application for Continuation Grant for Randomly Ordered DNA Arrays for SNP Genotyping	PX 432	06/29/2001	IAFP00572205	IAFP00572215	F, R, P	401(f), 401(a), 403(prob)			
96	Draft Grant Application	PX 434	00/00/0000	CHEE046460	CHEE046475	A, F, R, P, Inc	901, 401(f), 401(a), 403(prob)			
97	Letter re: 1 R01 HG01911-01	PX 435	08/24/1998	IAFP00639910	IAFP00639919	F, R, P	401(f), 401(a), 403(prob)			
98	Handwritten Notes	PX 438	00/00/0000	IAFP00633299	IAFP00633308	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
99	Handwritten Notes	PX 439	00/00/0000	IAFP00594127	IAFP00594140	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
100	Email re: Conference call with John Quackenbush	PX 443	01/24/2003	IAFP00634151	IAFP00634151	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
101	Email re: FW: Lockhart's talk	PX 445	11/01/1999	CHEE010112	CHEE010112	F, R, P	401(f), 401(a), 403(prob)			
102	Email re: david lockhart offer letter - updated	PX 446	02/06/2000	CHEE021824	CHEE021824	F, R, P	401(f), 401(a), 403(prob)			

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103	Email re: imaging system	PX 447	06/14/1999	CHEE045995	CHEE045996	F, R, P	401(f), 401(a), 403(prob)			
104	Illumina PowerPoint Presentation - High-Throughput Expression Profiling with BeadArray Technology	PX 452	00/00/0000	IAFP00011676	IAFP00011728	F, R, P	401(f), 401(a), 403(prob)			
105	Email re: Affy Clone instructions_TM_edits.doc	PX 463	07/09/2003	IAFP00556308	IAFP00556308	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
106	Email re: RE: Poly(A) spike manual supplement	PX 465	07/09/2003	IAFP00556497	IAFP00556498	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
107	Email re: RE: Affy and Probe design	PX 466	02/26/2004	IAFP00555687	IAFP00555687	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
108	High-throughput SNP genotyping on universal bead arrays	PX 494	07/07/2004	IAFP00532479	IAFP00532490					
109	Illumina PowerPoint Presentation - Genotyping via GenTrain / GenCall	PX 498	07/17/2002	IAFP00507466	IAFP00507523	F, R, P	401(f), 401(a), 403(prob)			
110	Email re: affyread error	PX 500	04/06/2005	IAFP00516853	IAFP00516856	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
111	Email re: Thank you - LOH analysis software discussion	PX 501	10/07/2004	IAFP00517082	IAFP00517083	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
112	Illumina Catalog List 2003 - document produced live (live and paper copy may be offered)	PX 509	02/17/2006							
113	Notice of Deposition of Illumina, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6)	PX 600	12/22/2005			F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
114	Illumina Systems, Products and Services Catalog 2005	PX 601	12/01/2005	IAFP00641957	IAFP00641978					
115	Claim Construction Memorandum Opinion	PX 675	08/16/2006							
116	Notebook No. 19 Issued to William Dower	DX 123	01/12/1990	AVI_138595	AVI_138694	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
117	Notebook No. 20 Issued to William dower		06/12/1989	AVI_138695	AVI_138755	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
118	Notebook No. 31 Issued to William Dower		09/01/1989	AVI_139053	AVI_139118	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
119	Curriculum Vitae for Richard Patrick Rava	DX 245	00/00/0000	AVI_196069	AVI_196074	F, H, R	401(f), 801/803, 401(a)			

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120	Design Input Requirements - Cartridge Barcode Design Input Requirements	DX 248	04/01/2002	AVI_135052	AVI_135058	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
121	High Capacity Substrates for DNA Probe Arrays	DX 373	00/00/0000	AVI_134606	AVI_134635	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
122	Claim Construction Order	DX 604	08/16/2006							
123	Notebook No. 447 Issued to Mark Chee (by KK)		08/05/1992	AVI_140004	AVI_140102	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
124	Notebook No. 663 Issued to Mark Chee		07/20/1994	AVI_140230	AVI_140328	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
125	Notebook No. 77X Issued to Mark Chee		11/09/1993	AVI_139404	AVI_139502	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
126	Notebook No. 111X Issued to Mark Chee		04/04/1994	AVI_139503	AVI_139599	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
127	Notebook No. 136X Issued to Mark Chee		07/05/1995	AVI_139600	AVI_139697	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
128	Notebook No. 196 Issued to Mark Chee		04/00/1995	AVI_075559	AVI_075659	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
129	Notebook No. 223 Issued to Mark Chee		09/00/1995	AVI_141870	AVI_141976	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
130	Notebook No. 00005 issued to Mark Chee	PX 417	08/00/2004	IAFP00468305	IAFP00468343	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
131	Future Medicine Company Profile - Illumina Inc.		00/00/2005	AVI_212370	AVI_212375					
132	Illumina SNP Genotyping - Randomly Assembled Arrays: Applications to SNP Genotyping (Illumina Poster Presentation, 2001		00/00/2001	IAFP00508217	IAFP00508217	A, F, R, P	901, 401(f), 401(a), 403(prob)			
133	Product & Technology Report - BeadArray Technology: Enabling an Accurate, Cost-Effective Approach to High-Throughput Genotyping		06/00/2002	AVI_118599	AVI_118603					
134	Illumina Power Point Presentation - Genotyping via GenTrain / Gen Call		07/17/2002	IAFP00507221	IAFP00507278	F, R, P	401(f), 401(a), 403(prob)			
135	Illumina Systems and Software - Illumina BeadScan 3.2 Software		00/00/2006	AVI_214162	AVI_214163	U, F, R, P	403(prob), 401(a)			
136	Illumina SNP Genotyping - GoldenGate Assay Workflow		00/00/2004	IAFP00550850	IAFP00550851					

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137	Settlement and Cross License Agreement between Applera Corporation and Illumina		08/18/2004	IAFP00644018	IAFP00644034	F, R, P	401(f), 401(a), 403(prob)			
138	A genome-wide scalable SNP genotyping assay using microarray technology		04/17/2005	AVI_118360	AVI_118385					
139	Genetic Variance Detection Technologies for Pharmacogenomics Chapter 10 - Whole Genome Genotyping on		00/00/0000	AVI_212395	AVI_212410	A, B, F, H, Inc, R, U	901, 401(f), 801/803, 403(prob), prod			
140	Illumina SNP Genotyping - Infinium Assay Workflow		00/00/2005	AVI_212368	AVI_212369					
141	Illumina Web Page - Infinium Whole Genome Genotyping		00/00/2006	AVI_212464	AVI_212468					
142	Curriculum Vitae of Rudy Guerra					F, H	401(f), 801/803			
143	Research Plan		00/00/0000	IAFP00639881	IAFP00639907	A, F, H, R, P, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
144	Odyssey Program Update - Illumina Board Meeting		10/22/2002	IAFP00536340	IAFP00536355	F, R, P	401(f), 401(a), 403(prob)			
145	Email re: RE: candidate evaluation for Jian-Bing Fan		04/12/1999	CHEE031523	CHEE031523	F, R, P	401(f), 401(a), 403(prob)			
146	Email re: receipt of offer and letter and questions regarding getting more shares of stock		04/20/1999	CHEE031522	CHEE031522	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
147	Email re: RE: hapmap assays		04/30/2004	IAFP00547643	IAFP00547644	F, R, P	401(f), 401(a), 403(prob)			
148	1997-1998 Performance Review Assessment for Kevin L. Gunderson		12/02/1997	IAFP00012001	IAFP00012002	F, R, P	401(f), 401(a), 403(prob)			
149	Draft Specifications		06/05/1999	CHEE029664	CHEE029667	A, F, R, P	901, 401(f), 401(a), 403(prob)			
150	Email re: Gunderson leaving Affymetrix for Illumina		09/22/1998	AVI_081696	AVI_081696	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
151	Illumina PowerPoint Presentation - Corporate Overview		03/03/2000	IAFP00606648	IAFP00606688	F, R, P	401(f), 401(a), 403(prob)			
152	October 24 Offsite Action Items		10/00/2004	IAFP00570858	IAFP00570859	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
153	Illumina PowerPoint Presentation - Density evolution (or, how do we shrink Affy)		07/00/2005	IAFP00570724	IAFP00570733	F, R, P	401(f), 401(a), 403(prob)			

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154	Email re: RE: gene_flat_file_definition_draft053102.xls		06/02/2002	IAFP00547641	IAFP00547642	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
155	Illumina PowerPoint Presentation - A genome-wide scalable SNP genotyping assay using microarray technology (HUGO's 10th Human		04/18/2005	IAFP00516609	IAFP00516635	A, F, R, P	901, 401(f), 401(a), 403(prob)			
156	Email re: Important please respond - list of the content on the Affy Hu133 chips?		03/29/2004	IAFP00555230	IAFP00555230	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
157	Genotyping with generic tag chip and single base extension (SBE)		05/18/1999	IAFP00560581	IAFP00560584	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
158	Email re: FW: Affy3000 7G info		07/29/2005	IAFP00588631	IAFP00588631	F, R, P	401(f), 401(a), 403(prob)			
159	Email re: Mark		01/12/2004	IAFP00585502	IAFP00585503	F, R, P	401(f), 401(a), 403(prob)			
160	Odyssey Meeting Minutes		00/00/0000	IAFP00536574	IAFP00536577	F, R, P	401(f), 401(a), 403(prob)			
161	Illumina Acronyms		00/00/0000	IAFP00480195	IAFP00480198	A, F, R, P	901, 401(f), 401(a), 403(prob)			
162	Email re: Congratulations to Jian-Bing Fan		04/18/2000	IAFP00558649	IAFP00558649	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
163	Email re: RE: dynamic range of detection		10/04/2001	IAFP00547607	IAFP00547609	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
164	Email re: RE: Thanks again		11/14/2001	IAFP00556195	IAFP00556196	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
165	Bound Original of "Pioneering an Industry"		00/00/0000	copy at AVI_211119	AVI_211143	A, F, H, R, S	901, 401(f), 801/803, 401(a), 1006			
166	Photographs of Illumina Products - taken by Dan Reed at Kirkland & Ellis		10/14/2005	ILPRD0001	ILPRD0026					
167	Photographs of Illumina Products - taken by Dan Reed at Kirkland & Ellis		12/15/2005	ILPRD0027	ILPRD0040					
168	Journal of Medical Chemistry Perspective - Applications of Combinatorial Technologies to Drug Discovery. 1. Background and		04/29/1994	IAFP00006653	IAFP00006671	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
169	Journal of Medical Chemistry Perspective - Applications of Combinatorial Technologies to Drug Discovery. 2. Combinatorial Organic		05/13/1994	IAFP00654288	IAFP00654304	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
170	Generation and screening of an oligonucleotide-encoded synthetic peptide library		11/00/1993	AVI_214157	AVI_214161	U, F, H, P, R	prod			

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
171	Membrane Insertion Defects Caused by Positive Charges in the Early Mature Region of Protein pIII of Filamentous Phage fd Can Be		07/00/1994	AVI_214136	AVI_214145	U, F, H, P, R	prod			
172	BeadArray Technology: Enabling an Accurate Cost-Effective Approach to High-Throughput Genotyping		06/00/2002	AVI_118599	AVI_118603					
173	Highly parallel genomic assays		08/00/2006	IAFP00659359	IAFP00659371					
174	Original "Light-Directed, Spatially Addressable Parallel Chemical Synthesis"		02/15/1991	copy at AVI_003210	AVI_003216	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
175	Illumina PowerPoint Presentation - Pacific Growth Equities 2005 Life Sciences Growth Conference		06/07/2005	IAFP00630747	IAFP00630802	F, R, P	401(f), 401(a), 403(prob)			
176	Illumina Gene Expression Profiling Technical Bulletin - RNA Profiling with the DASL Assay		00/00/2005	AVI_212423	AVI_212430					
177	Illumina Gene Expression Profiling - Sentrix Human-6 Expression Bead Chip		00/00/2005	IAFP00022571	IAFP00022574					
178	Illumina Gene Expression Profiling Technology Spotlight - DASL Assay vs. Direct Hybridization		00/00/2005	AVI_212417	AVI_212418					
179	Illumina Systems & Software - Illumina BeadArray Reader		00/00/2003	AVI_211610	AVI_211611					
180	Illumina Web Page - Array Assembly & Manufacturing		00/00/0000	AVI_212460	AVI_212460					
181	Illumina Web Page - Technology Platform		00/00/0000	AVI_212458	AVI_212459					
182	Illumina SNP Genotyping - Sentrix HumanHap300 Genotyping Beadchip		00/00/2006	AVI_212433	AVI_212436					
183	Illumina Web Page - Sentrix HumanHap240S Genotyping Beadchip		00/00/0000	AVI_212462	AVI_212463					
184	Illumina Gene Expression Profiling Technical Bulletin - Gene Expression Profiling with Sentrix Focused Arrays		00/00/2005	AVI_212447	AVI_212454					
185	Order Construing Claims of US Patents Nos. 5,445,934, 5,744,305, 5,800,992, and 5,795,716 in Affymetrix v. Hyseq		01/22/2001	AVI_098006	AVI_098041	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
186	Illumina SNP Genotyping - Sentrix Human1 Genotyping BeadChip		00/00/2005	AVI_212437	AVI_212440					
187	Illumina Gene Expression Profiling - Sentrix Mouse-6 and MouseRef-8 Expression BeadChips		00/00/2006	AVI_212443	AVI_212446					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
188	Illumina Web Page - Sentrix Arrays		00/00/0000	AVI_211603	AVI_211603					
189	Illumina Web Page - Beadscan 3.0 Data Acquisition Software for Beadarray Reader		00/00/0000	AVI_212455	AVI_212457					
190	Illumina Systems & Software - BeadStation 500G Genotyping System		00/00/2004	AVI_212413	AVI_212416					
191	Illumina PowerPoint Presentation - Commercial Services - Sr. Staff Update		06/27/2005	IAFP00583805	IAFP00583820	F, R, P	401(f), 401(a), 403(prob)			
192	Illumina Web Page - Frequently Asked Questions: Genotyping Services expanded		00/00/2006	http://www.illumina.com/support/support		Inc	403(prob)			
193	Illumina Gene Expression Profiling - DASL Assay for RNA Profiling with Paraffin-Embedded Samples		00/00/2005	AVI_212419	AVI_212422					
194	Cold Spring Harbor Symposia on Quantitative Biology - Highly Parallel SNP Genotyping by Fan, et al.		00/00/2003	IAFP00532361	IAFP00532370					
195	A Versatile Assay for High-Throughput Gene Expression Profiling on Universal Array Matrices		00/00/2004	IAFP00532371	IAFP00532378					
196	Illumina Gene Expression Profiling - Sentrix HumanRef-8 Expression BeadChip		00/00/2005	IAFP00541256	IAFP00541259					
197	Illumina Gene Expression Profiling Technical Bulletin - Whole-Genome Expression Analysis Using the Sentrix Human-6 and HumanRef-8		00/00/2005	IAFP00541244	IAFP00541251					
198	Notebook No. 26 Issued to Stephen Fodor		07/20/1989	AVI_138964	AVI_139052	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
199	Supplement to Notebook No. 26 Issued to Stephen Fodor		11/16/1989	AVI_138756	AVI_138963	A, F, H, R, P, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
200	Notebook No. 44 Issued to Stephen Fodor		12/21/1989	AVI_139119	AVI_139216	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
201	Notebook No. 48 Issued to Stephen Fodor		01/11/1990	AVI_139217	AVI_139318	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
202	Notebook No. 909 Issued to Stephen Fodor		09/22/1993	AVI_140514	AVI_140524	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
203	Curriculum Vitae of Kevin Struhl					F, H	401(f), 801/803			
204	Email re: Jim Wolpert	PX 155	03/11/2004	IAFP00616218	IAFP00616218	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
205	Email re: Bio-ITWorld: RFID Tags	PX 252	01/18/2005	IAFP00535505	IAFP00535505	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
206	Email re: The Reverse Spin on Markham Decision...attaching Court Ruling Strengthens Affymetrix Patent Estate	PX 359	01/26/2001	IAFP00467001	IAFP00467003	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
207	Affymetrix Granted Significant Patent on Array Readers	PX 361	05/02/2001	IAFP00466927	IAFP00466927	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
208	Email re: Affx's patent press release	PX 378	04/06/2004	IAFP00558211	IAFP00558212	A, F, H, R	901, 401(f), 801/803, 401(a)			
209	Email re: CEO Visit Comments	PX 444	08/31/1999	CHEE023543	CHEE023544	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
210	Candidate Appraisal Form for Nicky Espinosa	PX 499	03/15/2000	IAFP00516121	IAFP00516121	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
211	Email re: FW: Affx's patent press release	PX 526	04/06/2004	IAFP00467595	IAFP00467596	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
212	Curriculum Vitae of George M. Gould					F, H	401(f), 801/803			
213	Curriculum Vitae of Matthew R. Lynde, Ph.D.					F, H	401(f), 801/803			
214	Exhibits 1 - 17, 19 to the Expert Report of Matthew R. Lynde, Ph.D.	PX 661	00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
215	Lynde Report Exhibit 1 - Summary of Damages Analyses 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
216	Lynde Report Exhibit2 - Lost Sales Capacity Analysis 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
217	Lynde Report Exhibit 3 - Instrument Production: Illumina vs. Affymetrix 2002-2005		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
218	Lynde Report Exhibit 4 - Affymetrix Array Production: Incremental Capacity Analysis 2002-2005		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
219	Lynde Report Exhibit 5 - Illumina Revenue Summary 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
220	Lynde Report Exhibit 6 - Universal Array Revenue Allocation 2004-2005 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
221	Lynde Report Exhibit 7 - GoldenGate Reagent Revenue Allocation 2002-2005 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
222	Lynde Report Exhibit 8 - Illumina Revenue Comparison 2002-2005 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
223	Lynde Report Exhibit 9 - Illumina Array Revenue 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
224	Lynde Report Exhibit 10 - Revenue Apportionment 2002-2007		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
225	Lynde Report Exhibit 11 - Incremental Revenue 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
226	Lynde Report Exhibit 12 - Affymetrix Gross Margin 2002-2007		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
227	Lynde Report Exhibit 13 - Affymetrix Factors of Production 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
228	Lynde Report Exhibit 14 - Variable Component of SG&A 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
229	Lynde Report Exhibit 15 - Affymetrix Incremental Margin Analysis 2002-2007		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
230	Lynde Report Exhibit 16 - Affymetrix Lost Profit Damages 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
231	Lynde Report Exhibit 17 - Reasonable Royalty Damages 2002-2007 (in thousands)		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
232	Lynde Report Exhibit 19 - Affymetrix Arrays: Gross Margin Analysis 2003-2006		00/00/0000			A, F, H, P, R, S	901, 401(f), 801/803, 403(prob), 401(a), 1006			
233	License Agreement between Affymetrix, Inc. and Molecular Dynamics, Inc.	PX 369	11/28/1997	AVI_145024	AVI_145052	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
234	License Agreement between Affymetrix, Inc. and NEN Life Science Products, Inc.	DX 529	04/01/2000	AVI_203658	AVI_203681	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
235	License Agreement between Affymetrix, Inc. and MWG - Biotech AG	DX 518	06/01/2000	AVI_199711	AVI_199734	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
236	Amendments 1-4 to License Agreement between Affy and MWG Biotech		00/00/0000	AVI_199735	AVI_199742	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
237	License Agreement between Affymetrix, Inc. and Takara Shuzo		09/05/2000	AVI_089526	AVI_089550	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
238	First Amendment To License Agreement between Affymetrix and Takara Bio, Inc.	DX 527	09/28/2000	AVI_208412	AVI_208420	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
239	License Agreement between Affymetrix, Inc. and Genomic Solutions, Inc.	PX 685	12/28/2000	AVI_204305	AVI_204331	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
240	License Agreement between F. Hoffman-La Roche and Affymetrix		01/29/2003	AVI_208202	AVI_208241	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
241	Amendment 1 to License Agreement between F. Hoffman-La Roche and Affymetrix		12/21/2004	AVI_208268	AVI_208280	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
242	License Agreement between Affymetrix, Inc. and Spectral Genomics, Inc.	DX 235	09/18/2003	AVI_089500	AVI_089522	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
243	Letter re: First Amendment to the License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral Genomics, Inc. ("SGI")		07/15/2005	AVI_210579	AVI_210584	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
244	Diagnostic License Agreement between Affymetrix, Inc. and Spectral Genomics, Inc.		01/01/2004	AVI_199743	AVI_199762	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
245	Letter re: Amendment to the Diagnostic License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral		03/30/2005	AVI_210571	AVI_210572	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
246	Letter re: Second Amendment to the Diagnostic License Agreement between Affymetrix, Inc. ("Affymetrix") and Spectral		07/15/2005	AVI_210573	AVI_210578	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
247	Commercial Use License Agreement between Affymetrix, Inc. and Applera Corporation	DX 238	12/20/2005	AVI_145080	AVI_145105	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
248	Commercial Use License Agreement between Affymetrix, Inc. and Abbott Molecular Inc.	DX 511	03/30/2006	AVI_201863	AVI_201892	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
249	Commercial Use License Agreement between Affymetrix, Inc. and Invitrogen Corporation		04/27/2006	AVI_208094	AVI_208128	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
250	Commercial Use License Agreement between Affymetrix, Inc. and Nimblegen Systems, Inc.	PX 687	09/26/2006	AVI_212475	AVI_212503	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
251	Patent License Agreement between Isis Innovation Limited and Beckman Instruments, Inc.	DX 502	04/17/1996	AVI_203606	AVI_203634	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
252	Settlement Agreement between Oxford Gene Technology Limited, Oxford Gene Technology IP Limited, Oxford Gene Technology Ltd. And	DX 501	03/23/2001	AVI_201356	AVI_201377					
253	Agreement between Oxford Gene Technology Limited, Oxford Gene Technology IP Limited, Oxford Gene Technology Ltd. And Edwin M.	DX 503	05/28/2004	AVI_201378	AVI_201386					
254	OGT Payment Summary	DX 344	00/00/2002							
255	The TR Patent Scorecard 2002		05/00/2002	AVI_211659	AVI_211661	A, F, H, P, R	901, 401(f), 801/803, 403(prob), 401(a)			

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256	GM spreadsheets - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00641507A-R	IAFP00641507A-R					
257	The TR Patent Scorecard 2004 - Excel Workbook containing 8 industry spreadsheets	DX 608	00/00/2004	AVI_212376	AVI_212394	A, F, H, P, R	901, 401(f), 801/803, 403(prob), 401(a)			
258	Illumina "GM" Spreadsheets - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643324	IAFP00643325					
259	2003 SalesLogArchive S.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643327	IAFP00643330					
260	Journal Entry Report.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643966	IAFP00643966					
261	2005 Revenue Summary-PRELIM.xls - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00643320	IAFP00643323					
262	GM Reagents 2005 FS - March - document produced live (live and paper copy may be offered)		03/17/2006	IAFP00641507	IAFP00641507					
263	Revenue Summary By Quarter	PX 507	00/00/2002	IAFP00544980	IAFP00545091					
264	Tom Deposition Exhibit 508	PX 508	00/00/0000							
265	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 512	00/00/0000	IAFP00643326	IAFP00643326					
266	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 513	00/00/0000	IAFP00643326	IAFP00643326					
267	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 523	00/00/0000	IAFP00643326	IAFP00643326					
268	Gross Margin Instrument FS.xls file	PX 514	00/00/0000							
269	GM Instruments 2004FS.xls file	PX 515	00/00/0000							
270	Strategic Plan Target - originally produced as a live document and part of 5 yr pl model - document produced live (live and paper copy may be offered)	PX 517	00/00/0000	IAFP00643265	IAFP00643265	F, P, R	401(f), 403(prob), 401(a)			
271	SalesSinceJan2002.xls - document produced live (live and paper copy may be offered)	PX 525	00/00/0000	IAFP00643326	IAFP00643326	Inc (exhibit)	403(prob)			
272	GM Arrays 2004 FS.xls(MAR)	PX 584	00/00/0000							

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
273	ITEM - SYSTEM - PRODUCT Combination Reassigned to Product Categories		09/22/2006			A, B, F, H, P, R, V	901, 401(f), 801/803, 403(prob), 401(a), prod			
274	Product Map Variable Guide		09/22/2006			A, B, F, H, P, R, V	901, 401(f), 801/803, 403(prob), 401(a), prod			
275	ITEM - KEY Matches With Assigned Categories		09/22/2006			A, B, F, H, P, R, V	901, 401(f), 801/803, 403(prob), 401(a), prod			
276	General Rules for Product Mapping		09/22/2006			A, B, F, H, P, R, V	901, 401(f), 801/803, 403(prob), 401(a), prod			
277	Illumina Product Mapping Assumptions		09/22/2006			A, B, F, H, P, R, V	901, 401(f), 801/803, 403(prob), 401(a), prod			
278	Illumina_Sales.pdf (382 page document)		09/22/2006			A, B, F, H, P, R, S, V	901, 401(f), 801/803, 403(prob), 401(a), prod, 1006			
279	License Agreement between Tufts University and Illumina, Inc.	PX 347	05/06/1998	IAFP00022372	IAFP00022389					
280	Amendment No. 1 to License Agreement between Tufts University and Illumina, Inc.	PX 349	07/22/1998	IAFP00022390	IAFP00022390					
281	Amendment to License Agreement between Tufts University and Illumina, Inc.	PX 350	11/28/2001	IAFP00022391	IAFP00022392					
282	Tufts University Sponsored Research Agreement between Illumina, Inc. and Tufts University	PX 348	07/22/1998	TU000033	TU000044	F, R, P	401(f), 401(a), 403(prob)			
283	Amendment to Tufts University Sponsored Research Agreement between Illumina, Inc. and Trustees of Tufts College	PX 351	10/01/1999	TU000046	TU000046	F, R, P	401(f), 401(a), 403(prob)			
284	Letter re: agreement between David K. Walt and Illumina, Inc. regarding right to purchase stock	PX 81	04/23/1998	DW000815	DW000816	F, R, P	401(f), 401(a), 403(prob)			
285	Consulting Agreement between Illumina, Inc. and David R. Walt	PX 82	04/30/1998	IAFP00022351	IAFP00022360	F, R, P	401(f), 401(a), 403(prob)			
286	Illumina, Inc. Restricted Stock Purchase Agreement	PX 94	04/30/1998	DW000827	DW000835	F, R, P	401(f), 401(a), 403(prob)			
287	License Agreement between Torrey Pines Institute for Molecular Studies and Spyder Instruments, Inc.	PX 358	11/10/1994	IAFP00613354	IAFP00613369	F, R, P	401(f), 401(a), 403(prob)			
288	Chip Sales Detail - document produced live (live and paper copy may be offered)	DX 323	00/00/0000	AVI_196154	AVI_196154	A, F	901, 401(f)			
289	Instrument Sales Detail - document produced live (live and paper copy may be offered)	DX 324	00/00/0000	AVI_196157	AVI_196157	A, F	901, 401(f)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
290	Part to Product Mapping - document produced live (live and paper copy may be offered)	DX 328	00/00/0000			A, F	901, 401(f)			
291	Chip and Instrument Revenues and Costs Excluding Variances	DX 332	00/00/0000	AVI_196156	AVI_196156	A, F	901, 401(f)			
292	Factors of Production	DX 334	00/00/0000			A, F	901, 401(f)			
293	Instrument Production 2002-2005	DX 337	00/00/2005	AVI_196159	AVI_196159	A, F	901, 401(f)			
294	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002 to 2005	DX 339	00/00/2005			A, F, R, P	901, 401(f), 401(a), 403(prob)			
295	Historical Equivalent Chip Output and Additional Capacity Available By Quarter 2002 to 2005	DX 600	00/00/2005	AVI_208735	AVI_208735	A, F, R, P, Inc (missing cover email)	901, 401(f), 401(a), 403(prob)			
296	Total Demand Spreadsheet - document produced live (live and paper copy may be offered)		00/00/0000	AVI_201784	AVI_201808	A, F, R, P	901, 401(f), 401(a), 403(prob)			
297	Q1 2006 Inventory - document produced live (live and paper copy may be offered)		00/00/0000	AVI_208706	AVI_208715	A, F, R, P, Inc (missing cover email)	901, 401(f), 401(a), 403(prob)			
298	Historical Equivalent Chip Output and Additional Capacity Available by Quarter 2002 to 2005 (Array Capacity) - document produced live		00/00/0000	AVI_201538	AVI_201538	A, F, R, P	901, 401(f), 401(a), 403(prob)			
299	Part to Product Mapping - document produced live (live and paper copy may be offered)		00/00/0000	AVI_201541	AVI_201541	A, F	901, 401(f)			
300	Historical Wafer Capacity Spreadsheet - document produced live (live and paper copy may be offered)		00/00/2005	AVI_201860	AVI_201860	A, F, R, P Inc (missing cover email)	901, 401(f), 401(a), 403(prob)			
301	Factors of Production.xls - document produced live (live and paper copy may be offered)			AVI_201542	AVI_201542	A, F, R	901, 401(f), 401(a)			
302	Affymetrix Internal Finance Package	DX 335	01/00/2002	AVI_195202	AVI_195250					
303	Factors of Production - COGNOS 2003-2005.xls - document produced live (live and paper copy may be offered)			AVI_201548	AVI_201548	A, F	901, 401(f)			
304	Affymetrix Internal Finance Package		02/00/2002	AVI_195174	AVI_195201					
305	Affymetrix Internal Finance Package		03/00/2002	AVI_195126	AVI_195173					
306	Affymetrix Internal Finance Package		04/00/2002	AVI_195072	AVI_195125					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
307	Affymetrix Internal Finance Package		05/00/2002	AVI_195017	AVI_195071					
308	Affymetrix Internal Finance Package		06/00/2002	AVI_194958	AVI_195014					
309	Affymetrix Internal Finance Package		07/00/2002	AVI_194900	AVI_194957					
310	Affymetrix Internal Finance Package		8/00/2002	AVI_194848	AVI_194899					
311	Affymetrix Internal Finance Package		09/00/2002	AVI_194792	AVI_194847					
312	Affymetrix Internal Finance Package		10/31/2002	AVI_194740	AVI_194791					
313	Affymetrix Internal Finance Package		11/30/2002	AVI_194688	AVI_194739					
314	Affymetrix Internal Finance Package		12/31/2002	AVI_194635	AVI_194687					
315	Affymetrix Internal Finance Package		01/31/2003	AVI_194585	AVI_194634					
316	Affymetrix Internal Finance Package		02/28/2003	AVI_194525	AVI_194584					
317	Affymetrix Internal Finance Package		03/31/2003	AVI_194467	AVI_194524					
318	Affymetrix Internal Finance Package		04/30/2003	AVI_194411	AVI_194466					
319	Affymetrix Internal Finance Package		05/31/2003	AVI_194355	AVI_194410					
320	Affymetrix Internal Finance Package		06/30/2003	AVI_194296	AVI_194354					
321	Affymetrix Internal Finance Package		07/31/2003	AVI_194236	AVI_194295					
322	Affymetrix Internal Finance Package		08/31/2003	AVI_194174	AVI_194235					
323	Affymetrix Internal Finance Package		09/30/2003	AVI_194118	AVI_194177					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
324	Affymetrix Internal Finance Package		10/31/2003	AVI_194061	AVI_194177					
325	Affymetrix Internal Finance Package		11/30/2003	AVI_194002	AVI_194060					
326	Affymetrix Internal Finance Package		12/31/2003	AVI_193940	AVI_194001					
327	Affymetrix Internal Finance Package		01/31/2004	AVI_193884	AVI_193939					
328	Affymetrix Internal Finance Package		02/29/2004	AVI_193826	AVI_193883					
329	Affymetrix Internal Finance Package		03/31/2004	AVI_193764	AVI_193825					
330	Affymetrix Internal Finance Package		04/30/2004	AVI_193701	AVI_193763					
331	Affymetrix Internal Finance Package		05/31/2004	AVI_193638	AVI_193700					
332	Affymetrix Internal Finance Package		06/30/2004	AVI_193571	AVI_193637					
333	Affymetrix Internal Finance Package		07/31/2004	AVI_193510	AVI_193571					
334	Affymetrix Internal Finance Package		08/31/2004	AVI_193448	AVI_193509					
335	Affymetrix Internal Finance Package		09/30/2004	AVI_193388	AVI_193447					
336	Affymetrix Internal Finance Package		10/31/2004	AVI_193332	AVI_193387					
337	Affymetrix Internal Finance Package		11/30/2004	AVI_193273	AVI_193331					
338	Affymetrix Internal Finance Package		12/31/2004	AVI_193208	AVI_193272					
339	Affymetrix Internal Finance Package	DX 336	01/31/2005	AVI_193090	AVI_193147					
340	Affymetrix Internal Finance Package		02/28/2005	AVI_193028	AVI_193089					

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341	Affymetrix Internal Finance Package		03/31/2005	AVI_192963	AVI_193027					
342	Affymetrix Internal Finance Package		04/30/2005	AVI_192902	AVI_192962					
343	Affymetrix Internal Finance Package		05/31/2005	AVI_193148	AVI_193176					
344	Affymetrix Internal Finance Package		06/30/2005	AVI_192838	AVI_192901					
345	Affymetrix Internal Finance Package		07/31/2005	AVI_192776	AVI_192837					
346	Affymetrix Internal Finance Package		08/31/2005	AVI_192713	AVI_192775					
347	Affymetrix Internal Finance Package		09/30/2005	AVI_192641	AVI_192712					
348	Affymetrix Internal Finance Package	DX 586	12/31/2005	AVI_210112	AVI_210187					
349	Affymetrix Internal Finance Package		03/31/2006	AVI_210188	AVI_210255					
350	Toward Genome-Wide SNP Genotyping		06/00/2005	AVI_211458	AVI_211463	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
351	UBS Investment Research - The DNA Microarray Market		01/23/2006	AVI_210588	AVI_210651	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
352	Infinium - Affymetrix Inc. Not out of the woods yet	PX 689	03/30/2006	AVI_210743	AVI_210771	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
353	Bear Stearns US Equity Research - Affymetrix, Inc. Initiating Coverage of AFFX With an Outperform Rating and \$25 Price Target		10/12/2006	AVI_212799	AVI_212823	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
354	Bear Stearns US Equity Research - Illumina, Inc. Initiating Coverage of ILMN with a Peer Perform Rating and \$38 Price Target		10/12/2006	AVI_212849	AVI_212872	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
355	Pacific Growth Equities - Illumina, Inc. Transitioning research coverage with a Neutral rating: We believe positive near-term momentum is	PX 659	10/16/2006	AVI_213210	AVI_213224	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
356	Illumina Product Category	PX 559	00/00/0000							
357	Illumina PowerPoint Presentation - Q3 Offsite Meeting	PX 238	00/00/0000	IAFP00599169	IAFP00599180	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
358	Whole Genome Expression Market Overview and Strategy	PX 562	00/00/0000	IAFP00543950	IAFP00543966	F, H	401(f), 801/803			
359	Welcome to Expression Expedition Q3 Sales Training Meeting	PX 239	00/00/2004	IAFP00543423	IAFP00543462	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
360	Illumina PowerPoint Presentation - Senior Staff Offsite Meeting 500K chip discussion	PX 255	07/00/2004	IAFP00570712	IAFP00570717	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
361	Illumina PowerPoint Presentation - Spring Offsite Meeting	PX 371	00/00/0000	IAFP00585780	IAFP00585815	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
362	Illumina PowerPoint Presentation - Leading Edge Sales Meeting - Market Assessment	PX 560	04/00/2005	IAFP00541086	IAFP00541149	F, H	401(f), 801/803			
363	Illumina PowerPoint Presentation - Leading Edge Sales Meeting	PX 561	04/00/2005	IAFP00541080	IAFP00541151					
364	Illumina PowerPoint Presentation - Production Scale Genotyping and Gene Expression Analysis Using Illumina BeadArray Technology	PX 221	00/00/0000	IAFP00540682	IAFP00540808	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
365	Illumina PowerPoint Presentation - UBS 2005 Global Life Science Conference	PX 143	09/29/2005	IAFP00630843	IAFP00630884	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
366	Illumina PowerPoint Presentation - Strategies to Combat Affymetrix 500K Selling Tactics	PX 376	00/00/0000	IAFP00616713	IAFP00616716	F, R, P	401(f), 401(a), 403(prob)			
367	Illumina PowerPoint Presentation - Strategic Offsite Introduction		00/00/0000	IAFP00586335	IAFP00586375	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
368	Illumina PowerPoint Presentation - August 2002 Offsite Meeting		08/00/2002	IAFP00570275	IAFP00570290	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
369	Thomson StreetEvents Final Transcript - ILMN - Q4 2005 Illumina, Inc. Earnings Conference Call		02/01/2006	AVI_211036	AVI_211052	F, R, P	401(f), 401(a), 403(prob)			
370	Thomson StreetEvents Final Transcript - ILMN - Q1 2006 Illumina, Inc. Earnings Conference Call		04/18/2006	AVI_210995	AVI_211014	F, R, P	401(f), 401(a), 403(prob)			
371	Thomson StreetEvents Final Transcript - ILMN - Q2 2006 Illumina, Inc. Earnings Conference Call		07/18/2006	AVI_211015	AVI_211035	F, R, P	401(f), 401(a), 403(prob)			
372	Thomson StreetEvents Final Transcript - ILMN - Q3 2006 Illumina, Inc. Earnings Conference Call	PX 656	10/17/2006	AVI_212762	AVI_212780	F, R, P	401(f), 401(a), 403(prob)			
373	Affymetrix Website - List of Products	PX 691	00/00/0000			A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
374	Affymetrix Announces Expanded Genomic Technologies Licensing Program	DX 233	04/05/2004	AVI_132670	AVI_132672	F, H	401(f), 801/803			

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375	Affymetrix GeneChip® Application-Specific Fixed Assays: http://www.affymetrix.com/products/reagents/specific/application_specifi		00/00/0000	AVI_214146	AVI_214148	A, F, H, U, R	901, 401(f), 801/803, prod			
376	Affymetrix and ParAllele Partner to Offer New Custom and Standard Genotyping Products		05/19/2004	AVI_213287	AVI_213289	A, F, H	901, 401(f), 801/801			
377	Affymetrix Completes Acquisition of ParAllele BioScience; Companies Combine Their Innovative Technologies to Enable Advances in		10/24/2005	AVI_213954	AVI_213956	A, F, H	901, 401(f), 801/802			
378	Affymetrix has Acquired ParAllele BioScience		00/00/0000	AVI_213234	AVI_213235	A, F, H	901, 401(f), 801/803			
379	Perlegen Completes \$100 Million Financing - Proceeds will facilitate rapid acceleration of Perlegen's genome scanning initiative		04/02/2001	AVI_211577	AVI_211579	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
380	Baylor College of Medicine - Affymetrix Analytical Services and Pricing http://www.bcm.edu/mcfweb/?PMID		00/00/0000	AVI_214164	AVI_214165	A, F, H, R, P, U	901, 401(f), 801/803, 401(a), 403(prob), prod			
381	Affymetrix to Introduce 1 Million-SNP Product in Early 2007 and Single 500K Array before End of 2006; Affymetrix and Broad Institute		07/18/2006	AVI_214154	AVI_214156	A, F, H, R, P, U	901, 401(f), 801/803, 401(a), 403(prob), prod			
382	Illumina Web Page Universal Arrays http://www.illumina.com/products/arrayreagents/universal_arrays.ilmn		00/00/0000							
383	Illumina Web Page - Custom Arrays http://www.illumina.com/products/arrayreagents/custom_arrays.ilmn		00/00/0000							
384	Illumina Web Page - Arrays and Reagents http://www.illumina.com/products/arrayreagents/overview.ilmn		00/00/0000							
385	Illumina Receives \$1.2 Million Phase 2 Grant from National Cancer Institute to Develop Microarrays for Protein Profiling		03/11/2002			R, P	401(a), 403(prob)			
386	Illumina Receives \$1.0 Million Phase 2 SBIR Grant from the National Institutes of Health to Develop Matrixed Microarrays		05/10/2002	CHEE008348	CHEE008349	R, P	401(a), 403(prob)			
387	Illumina Receives \$9 Million from the National Institutes of Health for Large-Scale Genotyping of the Human Genome		09/30/2002	IAFP00658931	IAFP00658931	R, P	401(a), 403(prob)			
388	Illumina SNP Genotyping - Linkage IV Panel: http://www.illumina.com/General/pdf/LinkageIV/linkage_4_data_final2.pdf		00/00/2004							
389	Illumina Receives \$1.2 Million Grant from the National Institutes of Health to Continue Research on Bead-Based Proteomic Arrays		08/11/2004	IAFP00503703	IAFP00503704	R, P	401(a), 403(prob)			
390	Illumina Reports Financial results for Second Quarter 2006; Consumables and Instrument Revenue Drive 163% Growth Over Prior-Year		07/18/2006	AVI_211595	AVI_211602					
391	Illumina Reports Financial Results for Third Quarter 2006 - Company Raises Financial Guidance		10/17/2006	AVI_213929	AVI_213936					

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392	Email re: Research Help with 7G	DX 479	09/17/2005	AVI_203859	AVI_203859	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
393	Email re: FW: Revenue by Wafer for Greg Schiffman 10-7-05.xls		10/07/2005	AVI_208458	AVI_208459	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
394	Email re: RE: Illumina - Affymetrix meeting	PX 528	03/30/2004	AVI_092361	AVI_092366	C, F, H, R	401(f), 801/803, 401(a)			
395	Email re: RE: Licensing discussions confidential	PX 529	05/14/2004	AVI_092393	AVI_092394	C, F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
396	Email re: Follow-up licensing discussions - confidential	PX 530	05/25/2004	AVI_092406	AVI_092408	C, F, R, P	401(f), 401(a), 403(prob)			
397	Email re: Revised term sheet - CONFIDENTIAL	DX 228	06/17/2004	AVI_092423	AVI_092427	C, F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
398	Email re: Cross-licensing proposal	PX 532	07/08/2004	AVI_092435	AVI_092436	C, F, R, P	401(f), 401(a), 403(prob)			
399	10+10 Sheet: Affymetrix GT Competitive Positioning		00/00/0000	IAFP00480174	IAFP00480175	F, R, P	401(f), 401(a), 403(prob)			
400	Email re: AFFX product shipment / revenue / cost data	PX 262	01/05/2002	IAFP00610311	IAFP00610314	F, R, P, H	401(f), 401(a), 403(prob), 801/803			
401	Email re: RE: USC Deal	PX 235	04/02/2004	IAFP00605391	IAFP00605392	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
402	Email re: RE: Illumina Notified of Affy Lawsuit	PX 533	07/27/2004	IAFP00615082	IAFP00615083	F, R, P	401(f), 401(a), 403(prob)			
403	Email re: RE: John Todd	PX 236	11/13/2004	IAFP00601226	IAFP00601226	F, R, P	401(f), 401(a), 403(prob)			
404	Email re: RE: Sanger	PX 327	02/09/2005	IAFP00586146	IAFP00586147	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
405	switch to I		00/00/0000	AVI_212848	AVI_212848	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
406	JP Morgan Company Report - Affymetrix, Inc. The "Gold Standard" in DNA Arrays		07/24/2002	AVI_212303	AVI_212350	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
407	Second Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 300	09/20/2005			F, R, P, H	401(f), 401(a), 403(prob), 801/803			
408	Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 504	02/07/2006			F, R, P, H	401(f), 401(a), 403(prob), 801/803			

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409	Illumina PowerPoint Presentation - Cost Reduction Activities Off Site Meeting	PX 136	07/19/2005	IAFP00550662	IAFP00550676	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
410	Notice of Deposition of Illumina, Inc. Pursuant to Fed.R.Civ.P 30(b)(6)	PX 503	12/28/2005			A, F, R, P, H	901, 401(f), 401(a), 403(prob), 801/803			
411	Affymetrix Form 10-K405 Filed: March 30, 2001 (period: December 31, 2000)		03/30/2001	AVI_119639	AVI_119739					
412	Affymetrix Form 10-K405 Filed: March 29, 2002 (period: December 31, 2001)		03/29/2002	AVI_119740	AVI_119852					
413	Affymetrix Form 10-K Filed: March 31, 2003 (period: December 31, 2002)		03/31/2003	AVI_119853	AVI_119953					
414	Affymetrix Form 10-K Filed: March 15, 2004 (period: December 31, 2003)		03/15/2004	AVI_120061	AVI_120188					
415	Affymetrix Form 10-K Filed: March 16, 2005 (period: December 31, 2004)		03/16/2005	AVI_120189	AVI_120332					
416	Affymetrix Form 10-K Filed: March 9, 2006 (period: December 31, 2005)		03/09/2006	AVI_213606	AVI_213753					
417	Affymetrix Form 10-Q Filed: May 15, 2000 (period: March 31, 2000)		05/15/2000							
418	Affymetrix Form 10-Q Filed: August 14, 2000 (period: June 30, 2000)		08/14/2000							
419	Affymetrix Form 10-Q Filed: November 14, 2000 (period: September 30, 2000)		11/14/2000							
420	Affymetrix Form 10-Q Filed: May 15, 2001 (period: March 31, 2001)		05/15/2001	AVI_125223	AVI_125272					
421	Affymetrix Form 10-Q Filed: August 13, 2001 (period: June 30, 2001)		08/13/2001	AVI_125222	AVI_125261					
422	Affymetrix Form 10-Q Filed: November 13, 2001 (period: September 30, 2001)		11/13/2001	AVI_125214	AVI_125221					
423	Affymetrix Form 10-Q Filed: May 15, 2002 (period: March 31, 2002)		05/15/2002	AVI_125616	AVI_125658					
424	Affymetrix Form 10-Q Filed: August 12, 2002 (period: June 30, 2002)		08/12/2002	AVI_125576	AVI_125615					
425	Affymetrix Form 10-Q Filed: November 14, 2002 (period: September 30, 2002)		11/14/2002	AVI_125536	AVI_125575					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
426	Affymetrix Form 10-Q Filed: May 15, 2003 (period: March 31, 2003)		05/15/2003	AVI_126176	AVI_126387					
427	Affymetrix Form 10-Q Filed: August 14, 2003 (period: June 30, 2003)		08/14/2003	AVI_126125	AVI_126175					
428	Affymetrix Form 10-Q Filed: November 14, 2003 (period: September 30, 2003)		11/14/2003	AVI_126065	AVI_126124					
429	Affymetrix Form 10-Q Filed: May 10, 2004 (period: March 31, 2004)		05/10/2004							
430	Affymetrix Form 10-Q Filed: August 9, 2004 (period: June 30, 2004)		08/09/2004							
431	Affymetrix Form 10-Q Filed: November 9, 2004 (period: September 30, 2004)		11/09/2004	AVI_126565	AVI_126621					
432	Affymetrix Form 10-Q Filed: May 10, 2005 (period: March 31, 2005)		05/10/2005	AVI_127505	AVI_127549					
433	Affymetrix Form 10-Q Filed: August 9, 2005 (period: June 30, 2005)		08/09/2005	AVI_127417	AVI_127460					
434	Affymetrix Form 10-Q Filed: November 9, 2005 (period: September 30, 2005)		11/09/2005							
435	Affymetrix Form 10-Q Filed: May 10, 2006 (period: March 31, 2006)		05/10/2006							
436	Affymetrix Form 10-Q Filed: August 30, 2006 (period: June 30, 2006)		08/30/2006							
437	Illumina Form 10-K Filed: March 29, 2001 (period: December 31, 2000)		03/29/2001	AVI_211767	AVI_211823					
438	Illumina Form 10-K405 Filed: March 29, 2002 (period: December 31, 2001)		03/29/2002	AVI_211714	AVI_211766					
439	Illumina Form 10-K Filed: March 27, 2003 (period: December 29, 2002)		03/27/2003	AVI_211824	AVI_211889					
440	Illumina Form 10-K Filed: March 12, 2004 (period: December 28, 2003)		03/12/2004	AVI_211890	AVI_211981					
441	Illumina Form 10-K Filed: March 8, 2005 (period: January 2, 2005)		03/08/2005	AVI_211982	AVI_212153					
442	Illumina Form 10-K Filed: March 6, 2006 (period: January 1, 2006)		03/06/2006	AVI_212154	AVI_212256					

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
443	Illumina Form 10-Q Filed: September 8, 2000 (period: June 30, 2000)		09/08/2000	IAFP00021626	IAFP00021650					
444	Illumina Form 10-Q Filed: November 8, 2000 (period: September 30, 2000)		11/08/2000	IAFP00021193	IAFP00021216					
445	Illumina Form 10-Q Filed: May 8, 2001 (period: March 31, 2001)		05/08/2001	IAFP00021398	IAFP00021428					
446	Illumina Form 10-Q Filed: August 13, 2001 (period: June 30, 2001)		08/13/2001	IAFP00021429	IAFP00021462					
447	Illumina Form 10-Q Filed: November 14, 2001 (period: September 30, 2001)		11/14/2001	IAFP00021115	IAFP00021153					
448	Illumina Form 10-Q Filed: May 13, 2001 (period: March 31, 2002)		05/13/2001	IAFP00021651	IAFP00021740					
449	Illumina Form 10-Q Filed: August 14, 2002 (period: June 30, 2002)		08/14/2002	IAFP00021463	IAFP00021495					
450	Illumina Form 10-Q Filed: November 13, 2002 (period: September 29, 2002)		11/13/2002	IAFP00021154	IAFP00021192					
451	Illumina Form 10-Q Filed: May 6, 2003 (period: March 30, 2003)		05/06/2003	IAFP00021357	IAFP00021397					
452	Illumina Form 10-Q Filed: August 4, 2003 (period: June 29, 2003)		08/04/2003	IAFP00021496	IAFP00021539					
453	Illumina Form 10-Q Filed: November 4, 2003 (period: September 28, 2003)		11/04/2003	IAFP00020962	IAFP00021007					
454	Illumina Form 10-Q Filed: May 4, 2004 (period: March 28, 2004)		05/04/2004	IAFP00021307	IAFP00021356					
455	Illumina Form 10-Q Filed: August 6, 2004 (period: June 27, 2004)		08/06/2004	IAFP00021540	IAFP00021625					
456	Illumina Form 10-Q Filed: November 12, 2004 (period: October 3, 2004)		11/12/2004	IAFP00021008	IAFP00021101					
457	Illumina Form 10-Q Filed: April 29, 2005 (period: April 4, 2005)		04/29/2005							
458	Illumina Form 10-Q Filed: August 8, 2005 (period: July 3, 2005)		08/08/2005							
459	Illumina Form 10-Q Filed: November 3, 2005 (period: October 2, 2005)		11/03/2005							

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
460	Illumina Form 10-Q Filed: May 8, 2006 (period: April 2, 2006)		05/08/2006							
461	Illumina Form 10-Q Filed: August 2, 2006 (period: July 2, 2006)		08/02/2006							
462	Letter re: Illumina, Inc.	PX 3	06/03/1998	IAFP00571399	IAFP00571404	F, R, P	401(f), 401(a), 403(prob)			
463	Chee Employee File	PX 6	09/24/2004	IAFP00571395	IAFP00571459	F, R, P, H	401(f), 401(a), 403(prob), 801/803			
464	Illumina Organizational Charts	PX 11	00/00/0000			F, R, P	401(f), 401(a), 403(prob)			
465	Senior Staff Organizational Chart	PX 17	11/07/2003	IAFP00466791	IAFP00466791	F, R, P	401(f), 401(a), 403(prob)			
466	Senior Staff Organizational Chart	PX 18	03/19/2001	IAFP00466795	IAFP00466795	F, R, P	401(f), 401(a), 403(prob)			
467	Science R&D Organizational Chart	PX 19	02/14/2005	IAFP00022348	IAFP00022348	F, R, P	401(f), 401(a), 403(prob)			
468	Science R&D Organizational Chart	PX 20	09/30/2003	IAFP00466880	IAFP00466880	F, R, P	401(f), 401(a), 403(prob)			
469	Chemistry Organizational Chart	PX 21	00/00/0000	IAFP00022567	IAFP00022567	F, R, P	401(f), 401(a), 403(prob)			
470	Chemistry Organizational Chart - ABI Decoding	PX 22	06/24/2000	IAFP00466822	IAFP00466822	F, R, P	401(f), 401(a), 403(prob)			
471	Chemistry Organizational Chart	PX 23	11/29/2001	IAFP00466825	IAFP00466825	F, R, P	401(f), 401(a), 403(prob)			
472	Genomics Organizational Chart	PX 24	00/00/0000	IAFP00466831	IAFP00466831	F, R, P	401(f), 401(a), 403(prob)			
473	Genomics Organizational Chart - Informatics & Molecular Biology	PX 25	06/24/2003	IAFP00466826	IAFP00466829	F, R, P	401(f), 401(a), 403(prob)			
474	Informatics 2002 Organizational Chart	PX 26	00/00/2002	IAFP00466834	IAFP00466834	F, R, P	401(f), 401(a), 403(prob)			
475	Molecular Biology Organizational Chart	PX 27	00/00/0000	IAFP00466833	IAFP00466833	F, R, P	401(f), 401(a), 403(prob)			
476	Engineering Organizational Chart	PX 28	00/00/0000	IAFP00022568	IAFP00022568	F, R, P	401(f), 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
477	Engineering Reporting - Feb '02 Organizational Chart	PX 29	02/00/2002	IAFP00466847	IAFP00466847	F, R, P	401(f), 401(a), 403(prob)			
478	Engineering Organizational Chart	PX 30	04/07/2005	IAFP00022342	IAFP00022342	F, R, P	401(f), 401(a), 403(prob)			
479	Chemistry Organizational Chart	PX 161	06/24/2003	IAFP00466821	IAFP00466824	F, R, P	401(f), 401(a), 403(prob)			
480	Bioinformatics Organizational Chart	PX 180	07/09/2001	IAFP00466830	IAFP00466830	F, R, P	401(f), 401(a), 403(prob)			
481	Science R&D Organizational Chart	PX 182	06/13/2003	IAFP00466861	IAFP00466861	F, R, P	401(f), 401(a), 403(prob)			
482	Engineering Organizational Chart	PX 183	01/10/2005	IAFP00022336	IAFP00022336	F, R, P	401(f), 401(a), 403(prob)			
483	Senior Staff Organizational Chart	PX 244	06/24/2002	IAFP00466794	IAFP00466794	F, R, P	401(f), 401(a), 403(prob)			
484	Nomination of GenTrain / GenCall Algorithms for 2002 Patent Award	PX 315	00/00/0000	IAFP00508193	IAFP00508193	F, R, P	401(f), 401(a), 403(prob)			
485	Declaration of John R. Stuelpnagel, D.V.M. in Affymetrix v. Illumina	PX 357	10/25/2004							
486	ngenetics Business Outline	PX 408	10/01/1997	CHEE052196	CHEE052214	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
487	eGenetics Assets	PX 410	00/00/0000	CHEE037763	CHEE037763	F, H, P, R, S	401(f), 801/803, 403(prob), 401(a), 1006			
488	Confidential Information and Invention Assignment Agreement between Illumina, Inc. and Mark Chee	PX 411	06/01/1998	IAFP00571413	IAFP00571423	F, P, R	401(f), 403(prob), 401(a)			
489	Molecular Biology Organizational Chart	PX 419	11/19/2001	IAFP00466835	IAFP00466835	F, R, P	401(f), 401(a), 403(prob)			
490	Email re: hapmap application update	PX 425	07/29/2002	CHEE001375	CHEE001376	F, R, P	401(f), 401(a), 403(prob)			
491	Illumina Employee Performance Appraisal for Bahram Kermani	PX 433	09/01/2000	CHEE036090	CHEE036093	F, R, P	401(f), 401(a), 403(prob)			
492	Illumina Performance Review of Bahram G. Kermani by Semyon Kruglyak	PX 486	00/00/2001	CHEE035251	CHEE035256	F, R, P	401(f), 401(a), 403(prob)			
493	Bahram Kermani Goals 4/2001 through 03/2002	PX 487	00/00/2002	CHEE035200	CHEE035200	F, R, P, B	401(f), 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
494	Grant Progress Report for Large-Scale Genotyping for the Haplotype map of the Human Genome	PX 491	09/15/2003	IAFP00571688	IAFP00571705	F, R, P	401(f), 401(a), 403(prob)			
495	Assignment of Patent Application from Chee, Wang and Jevons to Affymax Technologies, N.V.		02/24/1995	AVI_118798	AVI_118804					
496	Agreement for Assignment of Invention Rights from Affymax Technologies N.V. to Affymetrix, Inc. Pursuant to Affymetrix Technology		04/18/1996	AVI_085993	AVI_085994	Inc (missing Schedule A)	403(prob)			
497	Declaration and Power of Attorney from Chee, Wang, Jevons, Bernhart and Lipshutz to Norviel, Smith and Ritter		02/24/1995	AVI_118791	AVI_118792	Inc	403(prob)			
498	Illumina, Inc. Form 424B4		07/28/2000			F, R, P	401(f), 401(a), 403(prob)			
499	Email re: specs		06/06/1999	CHEE029668	CHEE029668	F, R, P	401(f), 401(a), 403(prob)			
500	Genotyping Algorithm Development Team Roster		00/00/0000	IAFP00594125	IAFP00594125	A, F, R	901, 401(f), 401(a)			
501	The final deprotection step in oligonucleotide synthesis is reduced to a mild and rapid ammonia treatment by using labile base-	PX 6	00/00/198	IAFP00006014	IAFP00006033	A, F, R, H	901, 401(f), 401(a), 801/803			
502	Allylic protecting groups in solid-phase DNA synthesis	PX 7	00/00/1988	AVI_212511	AVI_212512	A, F, R, P, H	901, 401(f), 401(a), 403(prob), 801/803			
503	Gene Synthesis Machines: DNA Chemistry and Its Uses	PX 8	10/18/1985	IAFP00004121	IAFP00004125	A, F, R, P, H	901, 401(f), 401(a), 403(prob), 801/803			
504	Mechanical Drawing - Gasket Dup Scan Cell	DX 8	00/00/0000	AVI_137427	AVI_137431	A, F, R, P, H	901, 401(f), 401(a), 403(prob), 801/803			
505	US Patent No. 5,143,854	DX 12	09/01/1992	AVI_038412	AVI_038438					
506	Affymax Invention Disclosure Form for Nucleic Acid VLSIPS Applications # 90-008	DX 44	06/05/1990	AVI_133303	AVI_133313	A, F, H, P, R	901, 401(f), 801/803, 403(prob), 401(a)			
507	Amendment and Reply to Office Action Pursuant to 37 CFR § 1.111 in re Application No. 10/125,530 for Arrays for Detecting Nucleic Acids	DX 155	01/03/2006	AVI_145106	AVI_145220	A, F, H, R, Inc	901, 401(f), 801/803, 401(a), 403(prob),			
508	Handwritten Notes re: conference with Nussbacher, Dower, Fodor, WMS, EPC (part of larger document with bates range AVI_199906-	DX 157	08/06/2000	AVI_199925	AVI_199925	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
509	Letter re: invention disclosure for Sequencing of Surface Immobilized Nucleic Acids Utilizing Micro Fluorescence Detection	DX 159	05/14/1990	AVI_199927	AVI_199936	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
510	Invoice No. 53217 from Townsend to Affymax	DX 166	06/28/1990	AVI_133250	AVI_133302	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
511	License Agreement between Affymetrix, Inc. and Genospectra, Inc.	DX 234	05/28/2004	AVI_098404	AVI_098425					
512	Collaboration Agreement between the Engelhardt Institute of Molecular Biology and the Affymax Research Institute	DX 367	07/30/1992	AVI_201316	AVI_201320	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
513	Invoice No. 62341 to Affymetrix from Smith	DX 405	01/30/1991	AVI_134228	AVI_134231	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
514	Declaration Under 37 C.F.R. § 1.132 in re the Patent Application 10/125,428, 10/125,460 and 10/125,530	DX 468	04/19/2002	AVI_145186	AVI_145220	F, H, R, P, Inc	401(f), 801/803, 401(a), 403(prob),			
515	Curriculum Vitae of John D. Sutherland	DX 562	00/00/0000			F, H	401(f), 801/803			
516	Allylic protecting groups in solid-phase DNA synthesis	DX 569	00/00/1988	IAFP00006034	IAFP00006035	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
517	The Allylic Protection Method in Solid-Phase Oligonucleotide Synthesis. An Efficient Preparation of Solid-Anchored DNA Oligomers	DX 570	00/00/1990	IAFP00006036	IAFP00006041	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
518	Photosensitive Protecting Groups of Amino Sugars and Their Use in Glycoside Synthesis. 2-Nitrobenzyloxycarbonylamino and 6-	DX 571	00/00/1974	IAFP00653834	IAFP00653839	B, F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
519	Photosensitive Protecting Groups	DX 572	00/00/1970	IAFP00004376	IAFP00004378	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
520	Photoremovable Protecting Groups in Organic Synthesis	DX 575	01/00/1980	IAFP00004748	IAFP00004774	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
521	Photolytic Deprotection and Activation of Functional Groups	DX 576	00/00/0000	AVI_214037	AVI_214135	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
522	Exhibit A to Expert Report of Dr. Hubert Köster - Curriculum Vitae of Dr. Hubert Köster	DX 600	00/00/0000			F, H	401(f), 801/803			
523	US Patent No. 7,073,720		07/11/2006	AVI_213992	AVI_214003	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
524	US Patent No. 6,845,706		01/25/2005	AVI_213586	AVI_213605	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
525	US Patent No. 7,122,157		10/17/2006	AVI_213290	AVI_213301	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
526	US Patent No. 6,736,324		05/18/2004	AVI_212937	AVI_212943	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
527	US Patent No. 5,639,612		06/17/1997	IAFP00644449	IAFP00644769	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
528	Curriculum Vitae of Robin A. Felder, Ph.D.					F, H	401(f), 801/803			
529	US District Court Northern District (San Jose) Civil Docket for Case # 99-CV-21163 - Affymetrix v. Hyseq		10/30/2001			A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
530	US District Court Northern District (San Jose) Civil Docket for Case # 99-CV-21165 - Affymetrix v. Synteni		12/30/2001			A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
531	Order Construing Claims of US Patents Nos. 5,445,934, 5,744,305, 5,800,992, and 5,795,716 in Affymetrix v. Hyseq		01/22/2001	AFF-HYS017028	AFF-HYS017057	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
532	Instructions for using the Affymetrix Patent CD		00/00/0000			A, F, H, R, P U	901, 401(f), 801/803, 401(a), 403(prob), prod			
533	Initial Disclosure of Prior Art Pursuant to 16-7 in Affymetrix v. Synteni		02/26/1999			A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
534	Initial Disclosure of Prior Art Pursuant to 16-7 in Affymetrix v. Synteni		06/11/1999			A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
535	First Amended Answer and Counterclaim in Affymetrix v. Synteni		08/11/2000	AVI_202022	AVI_202039	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
536	First Amended Answer and Counterclaim in Affymetrix v. Synteni		08/11/2000	AVI_202040	AVI_202081	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
537	Declaration of Kricka in the United States Patent and Trademark Office in re Application of T.D. Shalon, et al. Serial No. 08/514,875		10/26/1998			A, F, H, P, R, V, U	901, 401(f), 801/803, 403(prob), 401(a), prod			
538	Decision in Brown v. Fodor Interference No. 104,358		09/10/1999			A, F, H, P, R, U	901, 401(f), 801/803, 403(prob), 401(a), prod			
539	Decision in Brown v. Fodor Interference No. 104,358		09/10/1999			A, F, H, P, R, U	901, 401(f), 801/803, 403(prob), 401(a), prod			
540	US Patent No. 3,790,492		02/05/1974	AVI_214149	AVI_214153	A, F, H, R, P, U	901, 401(f), 801/803, 401(a), 403(prob), prod			
541	Curriculum Vitae of Dr. Hubert Köster					F, H	401(f), 801/803			
542	Scientia Yugoslavica		00/00/1990	AVI_212616	AVI_212723	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
543	US Patent Application No. 07/492,462 (The '462 Application)		03/07/1990	IAFP00015227	IAFP00015307					
544	US Patent Application No. 07/624,114 (The '114 application)		12/06/1990	IAFP00013538	IAFP00013692					

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545	Page 52 and 77 of "Amino Acid and Peptide Synthesis"		00/00/0000	AVI_213937	AVI_213938	A, F, H, R, P, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
546	Tetrahedron Report Number 309 - Advances in the Synthesis of Oligonucleotides by the Phosphoramidite Approach		00/00/1992	AVI_213756	AVI_213844	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
547	The Fluoren-9-ylmethoxycarbonyl Group for the Protection of Hydroxy-groups; Its Application in the Synthesis of an Octathymidyl Acid		00/00/1982	AVI_214004	AVI_214046	A, F, H, R, P, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
548	Solid Phase Synthesis of DNA Under a Non-Depurinating Condition with a Base Labile 5'-Protecting Group (Fmoc) Using		00/00/1987	AVI_213939	AVI_213941	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
549	The 9-Fluorenylmethoxycarbonyl (Fmoc) Group as a 5' Base Labile Protecting Group in Solid Supported Oligonucleotide Synthesis		00/00/1987	AVI_213900	AVI_213902	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
550	The 9-Fluorenylmethoxycarbonyl Group as a 5'-OH Protection in Oligonucleotide Synthesis		00/00/89	AVI_213920	AVI_213928	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
551	Total Synthesis of Thienamycin Analogues. Synthesis of the Thienamycin Nucleus and <i>dl</i> -Descysteaminythienamycin		12/06/1978	AVI_212934	AVI_212935	A, B, F, H, R, V, U	901, 401(f), 801/803, 401(a), prod			
552	US Patent No. 4,086,254		04/25/1978	AVI_213912	AVI_213919	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
553	Chemistry and Biology of beta-Lactam Antibiotics		00/00/1982	AVI_213754	AVI_213755	A, F, H, R, P, Inc	901, 401(f), 801/803, 401(a), 403(prob)			
554	Declaration of Stephen A. Fodor in the Matter of EPO 0 619 321		07/28/2003	IAFP00006345	IAFP00006351	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
555	Photochemistry of Phosphate Esters: An Efficient Method for the Generation of Electrophiles		00/00/1984	AVI_213225	AVI_213226	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
556	The Photolysis of Methoxy-Substituted Benzoin Esters. A Photosensitive Protecting Group for Carboxylic Acids		12/29/1971	AVI_213579	AVI_213585	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
557	Inverse Phosphotriester DNA Synthesis Using Photochemically-Removable Dimethoxybenzoin Phosphate Protecting Groups		00/00/1996	AVI_213957	AVI_213964	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
558	P NMR Study of the Mechanism of Activation and Coupling Reactions in the Synthesis of Oligodeoxyribonucleotides by the		00/00/1984	AVI_212504	AVI_212510	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
559	General scheme of the phosphotriester condensation in the oligodeoxyribonucleotide synthesis with arylsulfonyl chlorides and		00/00/1984	AVI_213965	AVI_213984	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
560	<i>In situ</i> of bis-dialkylaminophosphines - a new method for synthesizing deoxypolynucleotides on polymer		00/00/1984	AVI_214007	AVI_214017	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
561	The Efficiency of Light-Directed Synthesis of DNA Arrays on Glass Substrates		06/04/1997	IAFP00005226	IAFP00005235	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
562	The Effect of Spacer, Linkage and Solid Support on the Synthesis of Oligonucleotides		00/00/1989	IAFP00006068	IAFP00006083	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
563	Studies on Polynucleotides. XXIV. The Stepwise Synthesis of Specific Deoxyribopolynucleotides (4). Protected Derivatives of		12/05/1963	AVI_213985	AVI_213991	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
564	Comparison of Methods for Photochemical Phosphoramidite-Based DNA Synthesis		05/18/1995	AVI_213947	AVI_213953	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
565	Notebook No. DS 90002 Issued to Dennis Solas		05/21/1990	AVI_077332	AVI_077509	A, F, H, P, R	901, 401(f), 801/803, 403(prob), 401(a)			
566	Declaration of Stephen A. Fodor in the Matter of EPO 0 619 321		10/12/2000	IAFP00006084	IAFP00006088	A, F, H, P, R	901, 401(f), 801/803, 403(prob), 401(a)			
567	Email re: affymetrix competitive intel group meeting	PX 73	11/19/2004	IAFP00548515	IAFP00548516	F, P, R	401(f), 403(prob), 401(a)			
568	Email re: expression customers	PX 157	01/28/2003	IAFP00555816	IAFP00555816	F, P, R	401(f), 403(prob), 401(a)			
569	Email re: RE: Candidate Presentation: Christian Henry	PX 158	03/28/2005	IAFP00585964	IAFP00585965	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
570	Email re: FW: Seminar information for 10/18/2004	PX 175	10/11/2004	IAFP00547398	IAFP00547402	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
571	Email re: Draft agenda for Tuesday offsite meeting	PX 209	07/15/2005	IAFP00481160	IAFP00481162	F, R, P	401(f), 401(a), 403(prob)			
572	Sales Organization Chart	PX 211	00/00/0000	IAFP00466811	IAFP00466811	R, P	401(a), 403(prob)			
573	Sales Organizational Chart	PX 212	02/02/2005	IAFP00022347	IAFP00022347	R, P	401(a), 403(prob)			
574	Email re: RE: affx subscription fees	PX 214	05/15/2003	IAFP00566911	IAFP00566911	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
575	Email re: Affy 10+10 for GT	PX 218	02/29/2004	IAFP00480173	IAFP00480173	F, R, P	401(f), 401(a), 403(prob)			
576	Letter re: Trace Lane	PX 220	05/14/2003	IAFP00012415	IAFP00012415	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
577	Email re: Affy Genotyping Product Positioning	PX 222	04/09/2005	IAFP00574278	IAFP00574327	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
578	Email re: Affy GT Strategy and Competitive Positioning against ILMN	PX 223	04/10/2005	IAFP00480265	IAFP00480314	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
579	Email re: RE: Affy GT Strategy and Competitive Positioning against ILMN	PX 224	04/10/2005	IAFP00549155	IAFP00549156	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
580	Email re: RE: KNIH evaluation	PX 234	07/07/2005	IAFP00601301	IAFP00601304	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
581	Email re: Affy 500K Chip	PX 253	09/20/2004	IAFP00535390	IAFP00535392	F, R, P	401(f), 401(a), 403(prob)			
582	Illumina, Inc. Offsite Meeting - Affy competition	PX 254	07/19/2005	IAFP00535516	IAFP00535517	F, R, P	401(f), 401(a), 403(prob)			
583	Email re: Affy Genotyping Product Positioning	PX 278	04/09/2005	IAFP00610331	IAFP00610332	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
584	Affymetrix PowerPoint Presentation - Genotyping Products Positioning - DNA Analysis Product Marketing Group	PX 279	08/00/2004	IAFP00610333	IAFP00610381	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
585	Email re: CRUK Affy prices	PX 282	05/20/2005	IAFP00610526	IAFP00610527	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
586	Email re: RE: more affy info...	PX 283	03/17/2005	IAFP00601985	IAFP00601987	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
587	Email re: RE: Interview Jeremy Nickolenko, Gene Expression Market Manager	PX 290	05/26/2005	IAFP00614064	IAFP00614064	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
588	Email re: FW: Canadian diabetes project - Losing it - we need information	PX 303	05/23/2005	IAFP00588670	IAFP00588671	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
589	10+10 Sheet Affymetrix GT Competitive Positioning	PX 307	00/00/0000	IAFP00566933	IAFP00566935	F, H	401(f), 801/803			
590	10+10 Affy/Parallele Competitive Positioning	PX 308	00/00/0000	IAFP00480411	IAFP00480414	F, H	401(f), 801/803			
591	Email re: RE: WGG commitments	PX 330	03/25/2005	IAFP00616345	IAFP00616349	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
592	Email re: RE: Mayo Clinic!	PX 370	12/18/2004	IAFP00549525	IAFP00549525	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
593	Email re: RE: Parallele from the Inside	PX 372	05/04/2004	IAFP00615931	IAFP00615933	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
594	Email re: RE: GEX vs Affy idea	PX 373	06/22/2005	IAFP00588753	IAFP00588754	F, R, P	401(f), 401(a), 403(prob)			
595	Email re: RE: Pritzger Brain consortium	PX 377	11/12/2004	IAFP00603036	IAFP00603044	F, P, R	401(f), 403(prob), 401(a)			

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596	Letter re: Your New Employment with Illumina, Inc.	PX 384	04/30/2002	IAFP00571478	IAFP00571480	F, R, P	401(f), 401(a), 403(prob)			
597	Email re: FW: Affy3000 7G info	PX 392	07/29/2005	IAFP00610584	IAFP00610584	F, R, P	401(f), 401(a), 403(prob)			
598	Email re: FW: expression customers	PX 461	01/28/2003	IAFP00556385	IAFP00556385	F, R, P	401(f), 401(a), 403(prob)			
599	Letter re: Trace Lane	DX 312	03/14/2003	AVI_093271.1	AVI_093271.4	A, F, H, R, P	901, 401(f), 801/803, 401(a), 403(prob)			
600	Email re: RE: Affy 500K beta everywhere		10/15/2004	IAFP00566974	IAFP00566975	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
601	Email re: RE: Brain Consortium update FW: Follow up from Illumina		02/05/2005	IAFP00567257	IAFP00567260	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
602	Email re: FW: AB 1700 system		02/02/2004	IAFP00481422	IAFP00481423	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
603	Email re: RE: Affy setup		06/26/2002	IAFP00583153	IAFP00583153	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
604	Email re: Draft of Offer Form and offer Letter - Dr. Fahim Amini		06/16/2003	IAFP00481163	IAFP00481163	F, R, P	401(f), 401(a), 403(prob)			
605	United States Department of Justice, Horizontal Merger Guidelines		04/02/1992	AVI_213236	AVI_213278	A, E, F, H, R	901, 403(prob), 401(f), 801/803, 401(a)			
606	Email re: RE: Merck		01/03/2005	IAFP00601855	IAFP00601857	F, H, R, P	401(f), 801/803, 401(a), 403(prob)			
607	Exhibit 1 - Reproduction of Weinstein Expert Report Exhibit 4 with Corrected Gross Margin Percentages Illumina Proposal for		00/00/0000			F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
608	Illumina Announces Certified Service Provider Program for Genetic Analysis Services and Names First Participating		08/09/2006	AVI_213227	AVI_213228					
609	Illumina Expands Services Agreement with GlaxoSmithKline to include Infinium Genotyping with HumanHap550 BeadChips for Large		08/02/2006	AVI_212936	AVI_212936					
610	Illumina to Conduct Custom Genotyping for Johnson & Johnson Pharmaceutical Research & Development, L.L.C.		07/13/2006	AVI_213302	AVI_213303					
611	Margin Trends.xls (live and paper copy may be offered)			AVI_209017	AVI_209017	A, F, P, R, S, Inc.	901, 401(f), 403(prob), 401(a), 1006			
612	United States Patent and Trademark Office Notice of Recordation of Assignment Document		08/04/1995	AVI_214186	AVI_214193	F, H, Inc, P, R, U*	401(f), 801/803, 403(prob), 401(a), prod			

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613	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/07/1995	AVI_214166	AVI_214170	F, H, Inc, P, R, U	401(f), 801/803, 403(prob), 401(a), prod			
614	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/02/2000	AVI_214171	AVI_214176	F, H, Inc, P, R, U	401(f), 801/803, 403(prob), 401(a), prod			
615	United States Patent and Trademark Office Notice of Recordation of Assignment Document		06/07/1995	AVI_214181	AVI_214185	F, H, Inc, P, R, U	401(f), 801/803, 403(prob), 401(a), prod			
616	United States Patent and Trademark Office Notice of Recordation of Assignment Document		03/07/1990	AVI_214194	AVI_214212	F, H, Inc, P, R, U	401(f), 801/803, 403(prob), 401(a), prod			
617	Fortune - Soul of the New Gene Machines		05/02/2005	AVI_214177	AVI_214180	U, F, P, R, H	prod, 401(f), 403(prob), 401(a), 801/803			
618	Cowen and Company - Illumina Outperform (1) Another Blow Out Quarter		07/19/2006	AVI_210819	AVI_210824	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
619	Leerink Swann & Company - Illumina Inc. Powerful 2Q Over Genotyping's Growth And Its Popular Arrays; Guidance Raised		07/19/2006	AVI_210847	AVI_210855	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
620	Baird - Illumina, Inc. (ILMN) Dominating Genotyping Performance Fuels Big Q2 Beat, Upgrading to Outperform		07/19/2006	AVI_210808	AVI_210818	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
621	Infinium Capital - Gene Expression Microarray Market Conference Call Highlights		06/15/2006	AVI_210772	AVI_210792	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
622	Deutsche Bank - Affymetrix Beaten but NOT Broken!		02/01/2006	AVI_210683	AVI_210721	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
623	Pacific Growth Equities - Illumina Inc. Initiating coverage with an Over Weight rating		09/20/2004	AVI_210664	AVI_210682	A, F, P, R, H	901, 401(f), 403(prob), 401(a), 801/803			
624	Master Label Form Part Number 900767		08/25/2005	AVI_141869	AVI_141869	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
625	Consultant Services Agreement between Daniel H. Wagner Associates and Affymax Research Institute ("ARI")		05/03/1990	WAG000446	WAG000454	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
626	Letter re: signed original of Consultant Agreement		09/25/1991	WAG000481	WAG000486	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
627	Letter re: Services Agreement		10/23/1992	WAG000545	WAG000552	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
628	Letter re: Fax cop yof the Consultant Agreement		09/23/1991	WAG000496	WAG000503	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
629	Grant Application for Sequence Determination by Hybridization		03/12/1992	WAG000976	WAG001041	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			

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Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
630	Letter re: continuation of consulting agreement		07/01/1992	WAG000465	WAG000465	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
631	Internal Memorandum re: New Affymax Consulting Agreement		07/02/1992	WAG000464	WAG000464	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
632	Letter re: completion of initial peer review for grant application		08/26/1992	WAG000759	WAG000767	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
633	Letter re: consideration of application by National Advisory Council for Human Genome Research		10/08/1992	AVI_143345	AVI_143384	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
634	Signature Page		01/31/1995	AVI_118804	AVI_118804	F, H, P, R, Inc	401(f), 801/803, 403(prob), 401(a)			
635	Consultant Services Agreement between Mark Stephen Chee and Affymax Technologies		02/20/1992	AVI_134335	AVI_134339	B, Inc, F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
636	Affymax Research Institute Confidential Information, Secrecy and Invention Agreement between Affymax and Mark Chee		04/28/1993	AVI_134357	AVI_134365	F, H, P, R	401(f), 801/803, 403(prob), 401(a)			
637	Letter re: Services Agreement		10/23/1992	WAG000949	WAG000956	U, A, F, H, P, R	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
638	Order in Civil Action No. 04-901 JJF Denying Defendant Illumina Inc.'s Motion to Dismiss Affymetrix Count 2		08/16/2006			H, R, P	801/803, 401(a), 403(prob)			
639	Affymetrix Bioinformatics System Package 1		00/00/2000	AVI_214213	AVI_214214	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
640	Affymetrix Bioinformatics System Package 2		00/00/2000	AVI_214241	AVI_214242	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
641	Affymetrix Microarray Software Solutions		00/00/2000	AVI_214239	AVI_214240	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
642	GeneChip Bioinformatics Solutions		00/00/1999	AVI_214247	AVI_214248	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
643	Affymetrix Microarray Suite Version 4.0		00/00/2000	AVI_214233	AVI_214234	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
644	Affymetrix Microarray Suite Version 5.0		00/00/2002	AVI_214237	AVI_214238	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
645	Affymetrix Microarray Suite Version 5.1		00/00/2002	AVI_214235	AVI_214236	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
646	Affymetrix Microarray Software Solutions		00/00/2000	AVI_214244	AVI_214246	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			

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647	Software Box Wrapper		00/00/2002	AVI_214231	AVI_214232	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
648	Affymetrix Software Maintenance Terms and Conditions		00/00/2001	AVI_214243	AVI_214243	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
649	GeneChip Analysis Suite User Guide Version 3.3		00/00/1999	AVI_214229	AVI_214230	U, A, F, P, R, H, Inc	prod, 901, 401(f), 403(prob), 401(a), 801/803			
650	Affymetrix NetAffx The Lab Users Guide~analysis_center_manual		00/00/2001	AVI_050007	AVI_050022	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
651	GeneChip Barley Genome Array~barley_insert		00/00/2003	AVI_050107	AVI_050108	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
652	GeneChip B. subtilis Genome Array~bsubtilis_insert		00/00/2002	AVI_050149	AVI_050150	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
653	GeneChip Canine Genome Array~canine_insert		00/00/2003	AVI_050151	AVI_050153	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
654	Array~GeneChip Drosophila Genome Array~celegans_drosophila_datasheet.p		00/00/0000	AVI_050168	AVI_050171	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
655	GeneChip CustomExpress Advantage Arrays~cexpress_advantage_insert		02/02/2003	AVI_050174	AVI_050176	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
656	Corporate Standard Operating Procedure: Document Control and Maintenance		00/00/0000	AVI_214225	AVI_214230	U, A, F, H, P, R, Inc	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
657	Corporate Standard Operating Procedure: Document Control and Maintenance		00/00/0000	AVI_214215	AVI_214224	U, A, F, H, P, R, Inc	prod, 901, 401(f), 801/803, 403(prob), 401(a)			
658	GeneChip CustomExpress Premier Arrays~cexpress_premier_insert		02/00/2003	AVI_050177	AVI_050179	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
659	GeneChip CustomSeq Resequencing Demo Array~customdemo_insert		07/00/2003	AVI_050225	AVI_050226	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
660	GeneChip CustomSeq Resequencing arrays~customseq_datasheet		00/00/2003	AVI_050227	AVI_050230	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
661	GeneChip CustomSeq Resequencing Arrays~customseq_insert		11/00/2002	AVI_050254	AVI_050255	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
662	GeneChip CYP450 Assay~cyp450_datasheet		00/00/2001	AVI_050363	AVI_050364	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
663	Affymetrix Data Mining Tool (DMT) Version 3.0~dmt_datasheet		00/00/2001	AVI_050465	AVI_050466	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			

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664	GeneChip E. coli Antisense Genome Array~ecoli_antisense_datasheet		00/00/2002	AVI_050899	AVI_050900	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
665	Affymetrix GeneChip Operating Software (GCOS) Version 1.0 ~gcos_datasheet		00/00/2003	AVI_052281	AVI_052282	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
666	Affymetrix GeneChip Operating Software Server 1.0 (GCOS Server)~gcos_server_datasheet		00/00/2003	AVI_052945	AVI_052946	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
667	Affymetrix GeneChip DNA Analysis Software (GDAS) Version 2.0~gdas_datasheet		00/00/2003	AVI_052947	AVI_052950	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
668	GeneChip Human Genom U133A 2.0 array~hgu133a_insert		00/00/2003	AVI_053292	AVI_053294	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
669	GeneChip Human Genome U133 Plus 2.0 Array~hgu133_plus_insert		00/00/2003	AVI_053326	AVI_053328	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
670	GeneChip Human Genome U95 Set ~hgu95_datasheet		00/00/2001	AVI_053329	AVI_053330	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
671	GeneChip Human Genome Arrays ~human_datasheet		00/00/2003	AVI_053352	AVI_053355	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
672	Affymetrix Prevention Plus Instrument Service Agreement~isapp_service		00/00/2001	AVI_053486	AVI_053486	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
673	Affymetrix Laboratory Information Management System (LIMS) 3.0~lims_datasheet		00/00/2001	AVI_053489	AVI_053490	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
674	GeneChip Made-to-Order Program~made_datasheet		00/00/2001	AVI_054249	AVI_054253	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
675	Affymetrix Microarray Suite Version 5.1~mas_datasheet		00/00/2002	AVI_054258	AVI_054259	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
676	Affymetrix MicroDB User's Guide~Version 3.0~microdb_manual		00/00/2000	AVI_054814	AVI_054865	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
677	GeneChip Mitochondrial Resequencing Array~mitochondrial_insert		00/00/2003	AVI_054866	AVI_054867	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
678	GeneChip Mouse Genome Arrays~mogarrays_datasheet		00/00/2003	AVI_054877	AVI_054880	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
679	GeneChip Mouse Genome 430A 2.0 array~mouse430a_2_insert		00/00/2003	AVI_054881	AVI_054883	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
680	GeneChip Mouse Genome 430 2.0 Array~mouse430_2_insert		11/00/2003	AVI_054884	AVI_054886	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
681	GeneChip Mouse Expression Set 430 -mouse430_datasheet		00/00/2003	AVI_054887	AVI_054888	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
682	GeneChip Mouse Expression Set 430-mouse430_insert		04/00/2003	AVI_054889	AVI_054891	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
683	Affymetrix NetAffx Analysis Center-netaffx_datasheet		00/00/2002	AVI_054906	AVI_054907	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
684	GeneChip Pseudomonas aeruginosa Genome Array-pseudomonas_datasheet		00/00/2003	AVI_055077	AVI_055078	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
685	GeneChip SARS Resequencing Array-sars_insert		07/00/2003	AVI_055164	AVI_055165	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
686	Affymetrix Assurance Software Maintenance Agreement-smaassurance_service		00/00/2001	AVI_055192	AVI_055193	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
687	Affymetrix Basic-Software Maintenance Agreement-smabasic_service		00/00/2001	AVI_055194	AVI_055195	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
688	Affymetrix Elite Software Maintenance Agreement-smaelite_service		00/00/2001	AVI_055196	AVI_055197	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
689	GeneChip Xenopus laevis Genome Array-xenopus_insert		12/00/2003	AVI_055248	AVI_055250	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
690	GeneChip Zebrafish Genome Array-zebrafish_insert		12/00/2003	AVI_055255	AVI_055257	A, F, H, P, R, Inc	901, 401(f), 801/803, 403(prob), 401(a)			
	Response to Interrogatory No. 1					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 2					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 3					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 4					R, P, V	401(a), 403(prob)			
	Response to Interrogatory No. 5					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 7					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 9					R, P	401(a), 403(prob)			

EXHIBIT 9: ILLUMINA'S OBJECTIONS TO AFFYMETRIX'S LIST OF PRE-MARKED EXHIBITS, INCLUDING DESIGNATIONS OF INTERROGATORIES AND ANSWERS THERETO, THAT IT INTENDS TO OFFER AT TRIAL

Trial Exhibit No.	Description	Deposition Exhibit No.	Date	Bates Begin	Bates End	Illumina Objection	Affymetrix Response	Offered	Marked	Admitted
	Response to Interrogatory No. 11					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 12									
	Response to Interrogatory No. 16					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 17					R, P	401(a), 403(prob)			
	Response to Interrogatory No. 18									
	Response to Interrogatory No. 19					R, P	401(a), 403(prob)			
	Response to Request for Admission No. 1					R, V	401(a)			
	Response to Request for Admission No. 5					R, V	401(a)			
	Response to Request for Admission No. 6					R, V	401(a)			

*Exhibits 612 to 690 were only identified after the close of business on February 2, 2007, the business day before the pretrial order was due, and thus Illumina reserves the right to add additional objections once it has had a reasonable time to review the exhibits.

Exhibit 9**Key for Illumina's Objections To Affymetrix's Exhibits That It Intends To Offer At Trial**

Code	Description
A	The authenticity of the document has not been properly established for admission into evidence. Fed. R. Evid. 104, 901.
B	The Bates range for the document is improperly identified. Illumina reserves the right to amend its objections if Affymetrix provides the correct Bates range information for the exhibit.
BE	The information in the document is being used to prove the content of a writing, recording or photograph but is not the original writing, original or photograph; thus, should be excluded pursuant to best evidence rule. Fed. R. Evid. 403, 1001 <i>et seq.</i>
C	The document contains information that reflects compromise negotiations between the parties. Fed. R. Evid. 408.
D	The document is duplicative of other exhibits and/or is repetitious of other exhibits relating to the same subject matter. Fed. R. Evid. 403.
E	The document contains matter that is not considered evidence, but rather it contains legal conclusions/statutory language/case language or attorney argument of supposition that is impermissible and prejudicial. Fed. R. Evid. 401, 402, 403.
F	The document lacks supporting foundation. Fed. R. Evid. 401, 402, 403.
H	The document constitutes or contains hearsay in that it is an out-of-court statement offered in evidence to prove the truth of the matter asserted. Fed. R. Evid. 802.
Inc	The use of this document without accompanying testimony, other parts of the document, or another document, and is misleading and prejudicial. Fed. R. Evid. 403.
P	The document is prejudicial in that its probative value, if any, is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay waste of time, or needless presentation of cumulative evidence. Fed. R. Evid. 403. ¹
R	The document is irrelevant; it does not tend to make the existence of any fact that is of consequence to the determination of this action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401.
S	The document is an improper summary of other material. Fed. R. Evid. 1006.
U	The document was not timely produced during the litigation, and its use will unduly prejudice Illumina. Fed. R. Evid. 403.
V	The document as described is vague, and cannot be discerned with particularity.

¹ Illumina objects to a number of Affymetrix's exhibits as prejudicial under FRE 403 because, among other things, Affymetrix has withheld relevant material, such as laboratory notebooks and licensing-related material, that has precluded Illumina from conducting full discovery in this case.

Key to Affymetrix's Responses to Illumina's Objections to Affymetrix's Trial Exhibits

Affymetrix reserves the right to add to or amend its responses to Illumina's objections to Affymetrix's trial exhibits depending on how the Court divides the issues for trial and on the outcome of any motions *in limine*.

401(a)	Exhibit is relevant and admissible under FRE 401 and 402
401(f)	Exhibit does not lack foundation
403(prob)	Exhibit should not be excluded under FRE 403 because its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence
801/803	Exhibit is not hearsay or falls within a hearsay exception under FRE 801, 803, 804, 805 or 807
901	Exhibit does not lack authenticity or identification pursuant to FRE 901 or 902
1006	Exhibit is a proper summary under FRE 1006
Prod	Illumina has the Exhibit because it has been produced or provided to Illumina, including as an exhibit to a brief or disclosed in an expert report

EXHIBIT 10

Exhibit 10

THE WITNESSES AFFYMETRIX INTENDS TO CALL IN PERSON

Affymetrix presently intends to call the witnesses identified below to testify in person at trial, or by deposition if unavailable¹. Affymetrix reserves the right to call any witness identified in Illumina's witness list.

NAME

ADDRESS

Fact Witnesses

Dr. Edwin Ching	4248 Jefferson Avenue Woodside, California 94062
Mr. Alan Dance	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Dr. William Dower	2307 Branner Drive Menlo Park, CA
Dr. Stephen Fodor	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Ms. Jamie Kole	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Dr. Robert Lipshutz	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Mr. Philip McGarrigle	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Mr. Vern Norviel	Wilson Sonsini Goodrich & Rosati, P.C. 650 Page Mill Road Palo Alto, CA 94304

¹ Whether Affymetrix calls a witness, and whether that witness is live or by deposition, will depend in part on what issues are tried in any particular phase of the trial.

Mr. Robert Ragusa

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Mr. Carl Raimond

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Dr. Richard Rava

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Dr. Leighton Read

Alloy Ventures
400 Hamilton Avenue, 4th floor
Palo Alto, CA 94301

Mr. Alan Sherr

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Ms. Susan Siegel

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Mr. Greg Yap

Affymetrix, Inc.
3420 Central Expressway
Santa Clara, CA 95051

Expert Witnesses

Dr. Robin Felder

University of Virginia Health Sciences Center
Post Office Box 800403
Charlottesville, VA 22908

Mr. George Gould

Gibbons, Del Deo, Dolan, Griffinger &
Vecchione, P.C.
One Riverfront Plaza
Newark, NJ 07102

Dr. Rudy Guerra

Department of Statistics Rice University
Houston, TX 77005

Dr. Hubert Koester

Leinpfad 98,
D-22299 Hamburg
Germany

Dr. Matthew Lynde

Cornerstone Research
353 Sacramento Street, 19th Floor
San Francisco, CA 94111

Dr. Kevin Struhl

Department of Biological Chemistry and
Molecular Pharmacology Harvard Medical
School
Boston, MA 02115

Dr. John Sutherland

School of Chemistry
The University of Manchester
Oxford Road
Manchester M13 9PL
United Kingdom

Specialties of the experts to be called as witnesses

Summaries of the specialties of the experts Affymetrix expects to call are set out below. Further details are set out in their expert reports and CVs exhibited thereto.

Dr. Robin Felder

Dr. Felder is Professor of Pathology and Associate Director of Clinical Chemistry and Toxicology at the University of Virginia in Charlottesville, Virginia. He is also Director of the Medical Automation Research Center at the University of Virginia. He received a Bachelor of Science Degree from the College of William and Mary in Chemistry in 1977, and a Ph.D. in Biochemistry from Georgetown University in 1983. He performed a postdoctoral fellowship at the National Institutes of Health in 1983-1984. He is the author of approximately 145 scientific articles in peer-refereed journals and has published more than 35 scientific reviews and book chapters. He is a named inventor on 10 issued U.S. Patents and has been an invited lecturer at

more than 100 meetings, events, and conferences. He is the founder and former President of the Association for Laboratory Automation, which is an international multi-disciplinary organization of scientists and business professionals devoted to the advancement of automation and technology education in today's laboratories. He is, or was previously, a member of more than 40 committees, editorial boards and similar organizations. He is a Fellow of the National Academy of Clinical Biochemistry and Chair of the American Association of Clinical Chemistry Annual Automation Conference scheduled for 2007. He is also a member of the Scientific Advisory Boards of four companies.

Dr. Felder is expected to testify during the validity phase of the trial as to matters related to the validity of Affymetrix's United States Patent Nos. 5,545,531 and 6,399,365.

Mr. George Gould

Mr. Gould is a patent attorney and the former Vice President of Licensing and Corporate Development and Chief Patent Counsel of Hoffmann-La Roche Inc. He has over 40 years of experience in all facets of patent law and practice, including counseling corporations on patent law issues and procedures.

He received a Bachelor of Arts degree in Organic Chemistry in 1958 from the Johns Hopkins University, and undertook a graduate study program in Chemistry at New York University from 1958-1960. He received his J.D. degree in 1963 from Columbia University School of Law and his LL.M. degree in 1973 from New York University School of Law. He has been a patent attorney for over 40 years. He has extensive experience with patents, including obtaining and relying upon opinion letters, evaluating the patentability of inventions, assessing the infringement, validity and enforceability of patents and supervising all aspects of patent

litigation and enforcement. He has also drafted and successfully prosecuted hundreds of patent applications before the United States Patent and Trademark Office. From 1962 to 1968, he served as a patent attorney at Esso Research & Engineering Co. (now Exxon Corporation). From 1968 to 1996, he was a patent attorney for Hoffmann-La Roche Inc. ("Roche"), the U.S. affiliate of a multinational family of companies, including the last seven years as Chief Patent Counsel. In 1996, he retired from Roche as Vice President of Licensing and Corporate Development and Chief Patent Counsel. Mr. Gould also serves on the Boards of several start-up and more moderate sized biotechnology companies. In 1996, he joined the law firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione and is presently Of Counsel. He has been a member of the American Intellectual Property Law Association and the New Jersey Intellectual Property Law Association or their predecessors since 1962. He has testified as an expert witness in a number of other cases involving the biotechnology industry and has also served as a mediator or neutral arbitrator on several arbitration panels.

Mr. Gould will testify during the willfulness phase of the trial as to the duty of due care to avoid infringement of the known patent rights of others that a reasonable company owes, and in particular the objective standard of care that this duty requires for a corporation such as Illumina, Inc. starting out in the DNA microarray industry.

Dr. Rudy Guerra

Dr. Guerra is a professor in and former Chair of the Department of Statistics at Rice University. He has been on the faculty of Rice University since 2000. He is also on the Executive Committee of and served as the Rice Training Director for the Keck Center for Computational and Structural Biology. He is the Master of Jones Residential College. He holds

a bachelor's degree in Applied Mathematics from University of Texas. He received an M.A. in Mathematics and a Ph.D. (1992) in Statistics from University of California, Berkeley. Over the course of his career, his research has focused primarily on the application of statistical methods to biological and biomedical data, with an emphasis on genetics. Over the past two years he has focused on bioinformatics including data derived from DNA microarrays. He has been recognized for his contributions to the field of statistical genetics and bioinformatics. From 2001 through 2004, he was invited to serve on a grant study section (BMRD) for the National Institutes of Health in the area of statistical genetics and bioinformatics. He has published over 40 peer-reviewed scientific papers and is currently editing a book in the field of bioinformatics, to be published by Chapman Hall in 2007, entitled Meta-Analysis and Combining Data in Genetics. He is also authoring a textbook in statistical genetics for Chapman Hall in 2007, entitled A Primer of Statistical Genetics. He has reviewed papers for over a dozen journals in the area of bioinformatics. He is presently an Associate Editor of the Journal of the American Statistical Association. He is also a member of the American Statistical Association, the American Society of Human Genetics and the Society of Genetic Epidemiology. He is the director of the Gulf Coast Consortium for Bioinformatics, which coordinates the collaborative research in bioinformatics and computational biology across six universities and medical schools in the Houston-Galveston area.

Dr. Guerra will testify during the infringement phase of the trial as to whether Illumina, Inc.'s products, services, and methods of making and using such products infringe the asserted claims of Affymetrix's United States Patent No. 5,795,716 (the '716 patent), as well as other matters related to this patent, including validity, as may arise.

Dr. Hubert Koester

Dr. Koester is an expert in organic chemistry and biochemistry, including in particular DNA and peptide synthesis. He is the Managing Director of caprotec GmbH in Berlin, Germany, which succeeded HK Pharmaceuticals, Inc., in San Diego, CA, a company which he founded, providing a novel protein analysis technology suitable for the analysis of complex protein mixtures. He obtained his Vordiplom (equivalent to a Bachelors degree) in Chemistry in 1963 and his Diplomchemiker (equivalent to a Masters degree) in Chemistry in 1966, both from the University of Hamburg, in Hamburg, Germany. In 1968, he obtained his Doctorate from the Technical University in Braunschweig, Germany. In 1969, he became an Assistant Professor at the University of Hamburg in 1969, and in 1982 became a tenured Professor for Organic Chemistry and Biochemistry. He has founded or co-founded a total of four biotech companies, primarily around his own inventions. In 1994, he founded Sequenom (San Diego, California and Hamburg, Germany) which developed his inventions around DNA analysis using mass spectrometry. He is very familiar with the fields of biochemistry, genomics, and proteomics, fields which involve the study of gene and protein expression. He is also familiar with the application of sophisticated automated instrumentation for the synthesis and analysis of nucleic acids and proteins, and is also familiar with DNA microarray technology. He is familiar with photochemistry, photolithographic concepts and the synthesis of peptides and nucleic acids. He is the author of over 120 scientific publications and a named inventor on more than 60 issued patents. He has been on the Editorial Boards of Biomolecular Engineering and the Journal of Biochemical & Biophysical Methods.

Dr. Koester is expected to testify during the validity phase of the trial as to matters related to the validity of Affymetrix's United States Patent Nos. 6,355,432 and 6,646,243.

Dr. Matthew Lynde

Dr. Lynde is an economist and a Vice President of Cornerstone Research, an economic and financial consulting firm. He specializes in applied economic, financial, and statistical analysis of complex business matters, especially for intellectual property issues, including the calculation of damages. He has over 20 years of experience as a practicing applied economist for the government, academia, and business.

He earned both a B.A. and a Ph.D. in economics from the University of California at Berkeley. For more than 10 years, he has been involved in damages and liability questions in complex commercial litigation, as well as advising clients on patent and copyright licensing issues. He has testified as an expert witness in arbitration, deposition, and in both state and federal courts on patent, copyright, trademark and trade secret damages, contract breach damages, securities fraud damages, and ERISA related damages. He is a member of the American Economics Association, the National Association of Business Economists, the American Statistical Association, and the Licensing Executives Society.

Dr. Lynde will testify during the damages phase of the trial as to the damages that Affymetrix has sustained as a result of Illumina's infringement of the five patents-in-suit, including as to Affymetrix's entitlement to and quantification of lost profit damages, as well as damages in the form of a reasonable royalty on sales of Illumina's infringing products and services for which Affymetrix would not be found eligible by the court to receive lost profits. He will also testify in rebuttal to testimony on these matters by Illumina's experts and as to prejudgment interest. Dr. Lynde will also testify in rebuttal to Illumina's experts concerning alleged damages relating to Illumina's counterclaims.

Dr. Kevin Struhl

Dr. Struhl is the David Wesley Gaiser Professor of Biological Chemistry in the Department of Biological Chemistry and Molecular Pharmacology at Harvard Medical School. He has been on the faculty of the Harvard Medical School since 1982.

He holds a bachelor's and master's degree in biology from the Massachusetts Institute of Technology. He received a Ph.D. (1979) in biochemistry from Stanford University. He has been involved in biotechnology and genetics research for over 30 years. His research has focused on the structure, function, and control of genes. As such, he is familiar with and has used a number of molecular biology techniques, including nucleic acid hybridization and nucleic acid microarrays. He has received several awards for his scientific work, including the Eli Lilly Award in Microbiology and the MERIT award from the National Institutes of Health. He is also a Fellow in the American Academy of Microbiology and the American Academy of Arts and Sciences. He has published over 200 scientific papers and has been on the editorial boards of numerous journals. He is also familiar with the use of Affymetrix's GeneChip® microarrays and has used them in his own research. He testified as an expert witness for Affymetrix at the trial of Oxford Gene Technology Ltd. v. Affymetrix, Inc., 99-348-JJF (D. Del.) and at a deposition in Affymetrix, Inc. v. Multilyte Ltd., 03-3779 (N.D. Cal.).

Dr. Struhl will testify during the infringement phase of the trial as to whether Illumina, Inc.'s products, services, and methods of making and using such products infringe the asserted claims of Affymetrix's United States Patent Nos. 5,545,531, 6,355,432, 6,399,365 and 6,646,243.

Dr. John Sutherland

Dr. Sutherland is Professor of Biological Chemistry at the School of Chemistry at the University of Manchester. He has an undergraduate degree in chemistry and a D.Phil. in biological organic chemistry, both from the University of Oxford. Upon completion of his D.Phil. in 1988, he became a research fellow and then, in 1990, University Lecturer in Organic Chemistry at the University of Oxford. In 1998, he moved to his current position at the University of Manchester. He has been directly involved with peptide chemistry, and nucleic acid synthesis research since 1988. His knowledge of photochemistry dates back to the early 1980's and since then he has maintained an active interest in the area and has used photochemistry in his research. At the University of Manchester, he runs a group that carries out research in organic and biological chemistry, and he also teaches in these general areas. In the course of his career he has conducted research and published papers, *inter alia*, on solid-phase combinatorial synthesis, the synthesis of peptides, nucleic acid chemistry, and array screening. He is a named inventor on several patents and patent applications including ones concerned with arrays and screening.

Dr. Sutherland is expected to testify during the validity phase of the trial as to matters related to the validity, including in particular the enablement, of Affymetrix's United States Patent Nos. 6,355,432 and 6,646,243.

EXHIBIT 11

EXHIBIT 11**ILLUMINA'S IDENTIFICATION OF WITNESSES
THAT MAY BE CALLED IN PERSON AT TRIAL**

Pursuant to Rule 16.4(7) of the Local Rules for the District of Delaware, Illumina identifies the following persons that may be called as witnesses to testify in person at the trial of this matter. Determinations as to which witnesses will be called, and whether they will be called live or by deposition, will be made in accordance with guidelines agreed to by the parties and/or implemented by the Court. It should be further noted that although Illumina does not presently intend to call any witnesses beyond those listed below, Illumina reserves its right to call rebuttal witnesses as appropriate.

Illumina may call the following witnesses live at the trial:

1. David Barker, 12818 Via Grimaldi Drive, Del Mar, CA 92014
2. Kenneth Beattie, 1326 Open Range Road, Crossville, TN 38555
3. Mark Chee, 325 Arroyo Drive, Encinitas, CA 92024
4. Peter Coassin, 9645 Scranton Road, Ste. 140, San Diego, CA 92121
5. Radomir Crkvenjakov, 762 Haverhill Drive, Sunnyvale, CA 94087
6. Todd Dickinson, 7890 Via Belfiore, Unit #5, San Diego, CA 92129
7. John Elder, University of Oxford, South Parks Road, Oxford, OX130, England
8. Jay Flatley, 6725 Calle Pontebella, Rancho Sante Fe, CA 92091
9. Francisco Garcia, 11228 Vereda Mar Del Corazon, San Diego, CA 92130
10. Kevin Gunderson, 1543 Juniper Drive, Encinitas, CA 92024
11. Bob Kain, 6520 Mesa Norte Drive, San Diego, CA 92130
12. Tristan Orpin, 5174 Greenwillow Lane, San Diego, CA 92130
13. Michael Pirrung, 2511 Manchester Avenue, Cardiff By The Sea, CA 92007
14. Sir Edwin Southern, 12 School Road, Kidlington, Oxford OX5 2HB, England
15. Marvin Stodolsky, 13015 Country Ridge Dr., Germantown, MD 20874
16. John Stuelpnagel, 38 Briggs Avenue, Encinitas, CA 92024
17. David Walt, 233 Marlborough Street, Boston, MA 02116

The following expert witnesses may also be called live at the trial:

18. John Quackenbush, 12 Walpole Street, Dover, MA 02030

Dr. Quackenbush is a Professor of Computational Biology and Bioinformatics at the Harvard School of Public Health in Boston, Massachusetts, and a Professor of Biostatistics and Computational Biology, and a Professor of Cancer Biology, at

the Dana-Farber Cancer Institute, also in Boston, Massachusetts. Dr. Quackenbush is expected to provide testimony regarding the technology of the patents-in-suit and the accused products, as well as the state of the art at the time of the alleged inventions, and regarding issues relating to Affymetrix's '716 patent, including the non-infringement, invalidity, and unenforceability of this patent, including the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Finally, Dr. Quackenbush is expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix expert Dr. Rudy Guerra.

19. Aldons J. Lusic, 5321 Amigo Ave., Tarzana, CA 91356

Dr. Lusic is a Professor of Microbiology, Immunology, and Molecular Genetics in the College of Letters and Sciences, and a Professor of Medicine and Human Genetics in the David Geffen School of Medicine, at the University of California, Los Angeles. Dr. Lusic is expected to provide testimony regarding the technology of the patents-in-suit and the accused products, regarding issues relating to the non-infringement of Affymetrix's '432, '243, '531, and '365 patents, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Finally, Dr. Lusic is expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix experts Dr. Kevin Struhl, Dr. Hubert Köster, and Dr. Robin Felder.

20. Larry Kricka, 654 Dorset Road, Devon, PA 19333

Dr. Kricka is a Professor in the Department of Pathology and Laboratory Medicine at the University of Pennsylvania and Director of the General Chemistry Laboratory at the Hospital of the University of Pennsylvania. Dr. Kricka is expected to provide testimony regarding the technology of the patents-in-suit and the accused products, as well as the state of the art at the time of the alleged inventions, regarding issues relating to the invalidity and unenforceability of Affymetrix's '432, '243, '531, and '365 patents, including the proper priority and invention dates for these patents, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Finally, Dr. Kricka is expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix experts Dr. Hubert Köster, Dr. Robin Felder and Dr. John Sutherland.

21. Jeffrey Winkler, 410 Charles Lane, Wynnwood, PA 19096

Dr. Winkler is a Professor in the Department of Chemistry at the University of Pennsylvania. Dr. Winkler is expected to provide testimony regarding biological

polymer synthesis, including conventional chemistry, photochemistry and photolithographic synthesis methods, as well as the state of the art at the time of the alleged inventions, regarding issues relating to the non-enablement and lack of written description for the '432 and '243 patents, including the proper priority and invention dates for these patents, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Finally, Dr. Winkler is expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and opinions of Affymetrix expert Dr. John Sutherland.

22. Russell Adams, 3008 Mosby Street, Alexandria, VA 22305.

Mr. Adams is a former supervisory primary examiner with the United States Patent and Trademark Office, having worked for the USPTO for 33 years. Mr. Adams is also one of the world's leading experts on bar code usage, having been Editor-in-Chief of Bar Code News / ID Systems and Technical Editor of Automatic ID News, the two principal publications for the bar code industry. Mr. Adams is expected to testify with respect to the USPTO rules and procedures, the duties of patent applicants to comply with these rules and procedures, and the failure of the applicants for the patents-in-suit to comply with these rules and procedures. Mr. Adams is also expected to testify on the invalidity and unenforceability of the '365 patent, specifically as it relates to usage of bar codes, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Finally, Mr. Adams is expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix expert Dr. Robin Felder.

23. Raymond Sims, CRA International, 101 N. Wacker Drive, Suite 1600, Chicago, IL 60606

Mr. Sims is a Vice-President of CRA and a Co-Leader of its Intellectual Property practice. Mr. Sims has broad experience in consulting a wide variety of business and industrial clients and government agencies on matters involving financial and statistical analysis and modeling for the purpose of projecting and interpreting data and evaluating the economic impact of business decisions, transactions, and economic events. Mr. Sims has served as an expert in various litigation matters, including matters involving allegations of patent infringement. Mr. Sims is expected to testify with respect to the type and amount of damages (if any) that should be awarded for any finding of patent infringement in this case, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Mr. Sims is also expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix expert Dr. Matthew Lynde.

24. Roy Weinstein, Micronomics LLC, 777 South Figueroa Street, 46th Floor, Los Angeles, CA 90017

Mr. Weinstein is an economist and is President of Micronomics, Inc., an economic research and consulting firm located in Los Angeles, California. Mr. Weinstein has more than 35 years of experience in the areas of antitrust economics, industrial organizations, and the calculation of economic damages, and has been retained by governmental agencies and private clients to analyze markets and behavior in participants in those markets. Mr. Weinstein is expected to provide testimony with respect to Illumina's allegations of unfair competition and tortious interference with contractual and prospective business relations, and regarding the opinions and bases for the opinions set forth in his expert reports and deposition testimony. Mr. Weinstein is also expected to provide testimony in rebuttal to evidence introduced by Affymetrix on the above issues, including if introduced the testimony and the opinions of Affymetrix expert Dr. Matthew Lynde.

Though Illumina does not presently intend to call others of its employees live at trial, that does not necessarily mean that they are unavailable for trial. Illumina will inform Affymetrix of those Illumina employees that are available to be called live at trial at a mutually-agreeable time prior to trial. Likewise, Illumina may call witnesses from Affymetrix that are available to be called live at trial.

EXHIBIT 12

Exhibit 12

THE WITNESSES AFFYMETRIX MAY CALL BY DEPOSITION

Affymetrix may call the witnesses listed below to testify by deposition at trial¹.

Affymetrix reserves the right to call any witness to testify by deposition identified in Illumina's witness lists.

<u>NAME</u>	<u>ADDRESS²</u>
Dr. David Barker	12818 Via Grimaldi Del Mar, CA
Dr. Jian-Bing Fan	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Mr. Lawrence Bock	CW Group 2683 Via De La Valle Suite G Del Mar, CA 92014
Ms. Constance Brick	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Mark Chee	325 Arroyo Drive Encinitas, CA
Dr. Edwin Ching	4248 Jefferson Avenue Woodside, California 94062
Dr. Anthony Czarnik, Jr.	University of Nevada Department of Chemistry 1664 North Virginia Street Reno, NV 89503

¹ Whether Affymetrix calls a witness, and whether that witness is live or by deposition, will depend in part on what issues are tried in any particular phase of the trial.

² The current addresses of current or former Illumina employees are better known to Illumina than Affymetrix.

Dr. Todd Dickinson	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Ms. Noemi Espinosa	365 Cuesta Drive Los Altos, CA
Mr. Jay Flatley	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Francisco Garcia	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Kevin Gunderson	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Christian Henry	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Mr. Robert Kain	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Bahram Kermani	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Mr. Timothy Kish	388 Horse Pond Road Madison, CT 06443
Dr. Bethany Mancilla	5411 Lambeth Road Bethesda, MD
Dr. Timothy McDaniel	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Lawrence Mertz	18533 Azalea Drive Derwood, MD

Dr. Arnold Oliphant	15518 Markar Road Poway, CA 92064
Mr. Tristan Orpin	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. Ann Pease	758 Haverhill Drive Sunnyvale, CA
Mr. Robert Ragusa	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Ms. Susan Siegel	Affymetrix, Inc. 3420 Central Expressway Santa Clara, CA 95051
Ms. Penny Tom	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Dr. John Stuelpnagel	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975
Mr. Jorge Velarde	Illumina, Inc. 9885 Towne Centre Drive San Diego, CA 92121-1975

EXHIBIT 13

EXHIBIT 13**ILLUMINA'S IDENTIFICATION OF WITNESSES
THAT MAY BE CALLED BY DEPOSITION**

Pursuant to Rule 16.4(7) of the Local Rules for the District of Delaware, Illumina identifies the following persons that may be called as witnesses to testify by deposition at the trial of this matter. Determinations as to which witnesses will be called, and whether they will be called live or by deposition, will be made in accordance with guidelines agreed to by the parties and/or implemented by the Court. It should be further noted that although Illumina does not presently intend to call any witnesses beyond those listed below, Illumina reserves its right to call rebuttal witnesses as appropriate.

Illumina may call any of the following witnesses by deposition at the trial:

1. Affymetrix (30(b)(6) testimony)
2. Kenneth Beattie, 1326 Open Range Rd., Crossville, TN 38555
3. Derek Bernhart, 201 Elliot Way West, Seattle, WA 98119
4. Donald Besemer, 11417 Red Dog Road, Nevada City, CA
5. Edwin Ching, 4248 Jefferson Ave., Woodside, CA 94062
6. Radomir Crkvenjakov, 752 Haverhill Drive, Sunnyvale, CA 94087
7. Alan Dance, 4965 Jerries Drive, Saratoga, CA
8. William Dower, 2307 Branner Dr., Menlo Park, CA
9. Radoje Drmanac, 27635 Red Rock Rd., Los Altos, CA 94022
10. Stephen Fodor, 1120 Parkinson Ave., Palo Alto, CA
11. Robert Foote, 105 Elliot Circle, Oak Ridge, Tennessee
12. Virginia Goss Tusher, 10 Peninsula Rd., Belvedere, CA 94920
13. Luis Jevons, 701 Ramona Ave., Sunnyvale, CA
14. Fred Kramer, 561 West 231st Street, Riverdale, NY 10463
15. Tracy Lane, 12574 Darkwood Rd., San Diego, CA
16. Robert Lipshutz, 970 Palo Alto Ave., Palo Alto, CA 94301
17. Bethany Mancilla, 5411 Lambeth Rd., Bethesda, Maryland
18. Richard Mathies, 93 Danefield Place, Moraga, CA 94556
19. Phil McGarrigle, 714 Torrey Court, Palo Alto, CA
20. Lawrence Mertz, 18533 Azalea Drive, Derwood, MD
21. Vernon Norviel, 1155 El Abra Way, San Jose, CA
22. Ann Pease, 758 Haverhill Drive, Sunnyvale, CA
23. Michael Pirrung, 2511 Manchester Avenue, Cardiff By The Sea, CA 92007
24. Carl Raimond, 30 Great Oak Lane, Pittsford, NY 14534
25. Richard Rava, 1 Quetzal Court, Redwood City, CA

26. J. Leighton Read, 375 Coleridge Avenue, Palo Alto, CA 94301
27. Richard Sachleben, 4 Humiston Circle, Westford, MA
28. Alan Sherr, 12344 First Fork Road, Los Gatos, CA
29. Susan Siegel, 580 Patrol Road, Woodside, CA
30. William Smith, 95 Howard Way, Atherton, CA 94027
31. Dennis Solas, 22 Sequoia Way, San Francisco, CA 94127
32. Marvin Stodolsky, 13015 Country Ridge Drive, Germantown, MD
33. Lubert Stryer, 843 Sonoma Terrace, Stanford, CA
34. Mark Trulson, 1240 Martin Avenue, San Jose, CA
35. Chunwei Wang, 72 Middle Street, Lexington, MA 02421
36. James Winkler, 10696 Brookhollow Court, San Diego, CA 92126
37. Gregory Yap, 461 Second Street, San Francisco, CA

EXHIBIT 14

Exhibit 14

A BRIEF STATEMENT OF WHAT AFFYMETRIX INTENDS TO PROVIDE IN SUPPORT OF ITS CLAIMS, IN ADDITION TO THE FACTS NOT IN DISPUTE, INCLUDING THE DAMAGES CLAIMED, AND OTHER RELIEF SOUGHT

Affymetrix intends to provide in support of its claims, in addition to the facts not in dispute, including the damages claimed, and other relief sought, as follows:

Affymetrix intends to prove that Illumina infringes the '432 patent by making, selling, and using BeadArray nucleic acid arrays that embody all disputed limitations in claims [asserted claims] of the '432 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '243 patent by decoding its BeadArray nucleic acid arrays in a manner that performs all disputed limitations in claim [asserted claims] of the '243 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '243 patent by using a decoding apparatus during the manufacture of its BeadArray nucleic acid arrays that embodies all disputed limitation in claim [asserted claims] of the '243 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '243 patent by making, selling, and using BeadArray nucleic acid arrays, together with the associated scanners, that embody all disputed limitations in claims [asserted claims] of the '243 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '243 patent directly and indirectly (contributory/inducement) by using (and instructing its customers to use) BeadArray nucleic acid arrays, together with the associated scanners, in a manner that

performs all disputed limitations in claims [asserted claims] of the '243 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '531 patent directly and indirectly (contributory/inducement) by making and instructing its customers to make BeadArray nucleic acid arrays in a manner that performs all disputed limitations in claims [asserted claims] of the '531 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '365 patent by making, selling, and using BeadArray nucleic acid arrays that embody all disputed limitations in claims [asserted claims] of the '365 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '365 patent directly and indirectly (contributory/inducement) by using (and instructing its customers to use) the BeadArray nucleic acid arrays and associated scanners in a manner that performs all disputed limitations in claims [asserted claims] of the '365 patent, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina infringes the '716 patent by making, selling, and using GenCall software and related products and systems that embody all disputed limitations in claims [asserted claims] of the '716, literally or under the doctrine of equivalents.

Affymetrix intends to prove that Illumina willfully infringes each of the patents-in-suit, did not have a reasonable belief that it did not infringe the patents-in-suit or that the patents-in-suit were invalid, and failed to exercise due care to determine whether it was infringing.

Affymetrix intends to prove the amount of actual damages it has suffered from Illumina's infringement of the patents-in-suit, including lost profits damages and reasonable royalties in the amounts set forth in the expert report of Dr. Matthew Lynde, PhD. (Note that, to the extent that it is able based on Illumina's production of actual 2006 financial data, Affymetrix will provide updated damages figures for 2006 and provide proof regarding damages it has suffered due to price erosion.) Affymetrix will also prove its entitlement to enhanced damages, attorneys fees, and costs under 35 U.S.C. §§ 284 and 285 based on Illumina's willful infringement and other factors entitling Affymetrix to enhanced damages, and entitlement to prejudgment interest under § 284.

Affymetrix intends to prove entitlement to a permanent injunction prohibiting Illumina from infringing the patents-in-suit.

Affymetrix intends to rebut the proof offered by Illumina in its cases-in-chief.

Affymetrix intends to prove, to the extent necessary, that the alleged wrongful acts with respect to Illumina's counterclaims were covered by the privilege of competition and/or the privilege of free competition.

Affymetrix intends to prove an invention date of the '432 patent prior to December 6, 1990.

Affymetrix intends to prove an invention date of the '716 patent prior to October 21, 1994.

Affymetrix intends to prove an invention date of the '531 patent prior to June 7, 1995.

EXHIBIT 15

EXHIBIT 15**ILLUMINA'S BRIEF STATEMENT OF WHAT IT INTENDS TO PROVE AT TRIAL**

Illumina intends to prove that Affymetrix has engaged in unfair competition and tortious interference with contracts and prospective business relations. Illumina will show that Affymetrix has engaged in unfair, unlawful and/or fraudulent business practices that have resulted in harm to competition and to Illumina, which entitles Illumina to appropriate restitution and injunctive relief. Illumina also intends to prove that Affymetrix has engaged in intentional behavior, including wrongful conduct, that disrupted certain of Illumina's prospective or existing business relations, resulting in harm to Illumina. Illumina intends to prove the amount of damages it has suffered as a consequence of Affymetrix's wrongful conduct. Damages relating to this wrongful conduct are discussed and/or calculated in the expert report of Mr. Roy Weinstein. Further, Illumina intends to prove that Affymetrix interfered with Illumina's prospective and existing business relations with malice, oppression, or fraud such that Illumina is entitled to an award of punitive damages.

Illumina intends to prove that it is not liable for infringement of the patents-in-suit and, instead, that the patents are not infringed, are invalid and unenforceable, that Affymetrix has engaged in patent misuse by, *inter alia*, asserting its patent claims in this case, and that Affymetrix is estopped to assert them by equitable estoppel, prosecution laches, and unclean hands. Affymetrix is attempting to assert a large number of claims from five patents in this case.¹ Illumina intends to rebut Affymetrix's effort to prove infringement and, instead, will establish noninfringement of whichever of these claims Affymetrix is ultimately permitted to assert at trial. Illumina intends to defeat Affymetrix's allegations that Illumina has directly

¹ As discussed in other sections of this Proposed Pretrial Order, Affymetrix attempted to add after the close of fact discovery in this case an additional 9 claims of the patents-in-suit. Illumina has objected to this and has asked the Court to preclude this untimely assertion of new claims. Illumina's position is that Affymetrix should be limited to presenting evidence of infringement to five claims total selected from the claims that were asserted before fact discovery closed.

infringed the patents-in-suit and that it has induced and/or contributed to the infringement of the patents-in-suit in the United States. Illumina intends to defeat Affymetrix's allegations whether Affymetrix is limited to allegations of literal infringement or allowed to assert infringement under the doctrine of equivalents.

Illumina intends not only to defeat Affymetrix's allegations of infringement, but also to prove that the claims of the patents-in-suit are invalid. Faced with invalidating prior art, Affymetrix's infringement and validity experts have taken inconsistent positions in an attempt to assert infringement while avoiding this prior art. Affymetrix's patent claims are invalid on a number of bases. Illumina intends to prove that all of the claims are anticipated and/or obvious over the prior art, including prior publications (including patents and patent applications, articles, meeting abstracts and poster presentations), public use and public knowledge. Among other grounds for invalidity, Illumina intends to prove that Affymetrix derived many of the claims of the patents-in-suit from others; *e.g.*, Affymetrix's alleged inventors did not themselves invent the claims of, *inter alia*, the '432 patent but instead derived them from the work by Drs. Crkvenjakov and Drmanac ("Drs. C and D"), which at least one of its inventors, Dr. Stephen Fodor, learned of at a conference. It was not until after Dr. Fodor's return from this conference that Affymetrix began preparation of a patent application to claim Drs. C and D's work as its own invention. Illumina also intends to prove that the claims of the patents-in-suit are invalid for failure to comply with the requirements of section 112 of the Patent Act. Illumina will show that the patents-in-suit meet neither the requirement that the patent shall contain a written description of the invention that conveys to one of ordinary skill in the art that the inventor was in possession of the invention at the time of filing the application, nor the requirement that the patent enables those of ordinary skill in the art to make and use the full scope of the claimed invention without undue experimentation. Further, Illumina intends to prove that the patents-in-suit do not meet the

requirement that the claims particularly point out and claim the subject matter that the applicant for each patent regarded as the claimed invention.

Illumina intends to prove that Affymetrix, through its counsel, inventors and/or other relevant personnel, committed inequitable conduct in the prosecution of the patents-in-suit. Illumina intends to prove that Affymetrix and such persons were aware of and withheld material information from the United States Patent and Trademark Office (“USPTO”) during prosecution with the intent to mislead the USPTO. Illumina thus intends to prove that each of the patents-in-suit is unenforceable. Illumina will prove a pattern of misconduct by Affymetrix, certain of its inventors and its counsel, with these persons having clear knowledge of the most relevant prior art but concealing it from the USPTO with intent to mislead the USPTO. Illumina will prove that Affymetrix has engaged in patent misuse by enforcing and attempting to enforce the patents-in-suit while knowing that one or all of the patents-in-suit were unenforceable and/or invalid, and that such conduct, as well as the misconduct before the USPTO, renders the patents unenforceable.

Illumina intends to prove that each of the patents-in-suit are also unenforceable against Illumina under the doctrines of laches and equitable estoppel. Illumina intends to prove that Affymetrix unreasonably and inexcusably delayed in filing suit against Illumina, and that Illumina relied on such delay, such that Illumina will be materially prejudiced if Affymetrix is permitted to enforce its patents against Illumina. Further, Illumina will show that one or more of the patents-in-suit are unenforceable because one or more issued after an unreasonable and unexplained delay in prosecution before the USPTO.

Illumina intends to rebut and to defeat any claim by Affymetrix that any infringement of a valid and enforceable claim of any of the patents-in-suit was willful. Illumina’s technology was not in any way copied from the patents-in-suit, and it presents a fundamentally new way of studying samples of nucleic acids. Illumina will rebut any

evidence introduced by Affymetrix and show that it took appropriate measures and met its duty of care under the totality of the circumstances.

Illumina intends to rebut any claim by Affymetrix that it complied, and to prove instead that Affymetrix did not comply, with the notice requirement of 35 U.S.C. § 287. In the event that Illumina is found to infringe a valid and enforceable claim of the patents-in-suit (which it does not), Illumina also intends to rebut Affymetrix's claim for patent damages and to introduce evidence that the proper measure of patent damages is in the form of a reasonable royalty and in the amount described in the expert report of Raymond Sims. Illumina also intends to rebut any claim for attorneys fees and enhanced damages, and to rebut any claim of entitlement to a permanent injunction.

Illumina intends to prove that this is an exceptional case and that Illumina is entitled to its attorneys' fees in being forced to defend it.

EXHIBIT 16

Exhibit 16

**A LIST OF MISCELLANEOUS ISSUES THAT AFFYMETRIX
WISHES TO ADDRESS AT THE PRE-TRIAL CONFERENCE**

1. The bifurcation, separation, and order of issues for trial.

a. Affymetrix proposes that the first phase of trial include infringement, damages, and willfulness. Affymetrix proposes that the second phase include validity.

Illumina has requested that the trial of validity issues take place in the summer. Subject to availability of Affymetrix's experts, witnesses, and counsel, Affymetrix does not object to Illumina's proposal.

b. Illumina proposes a trial of infringement and Illumina's state law unfair competition claims. Affymetrix opposes this for several reasons including (1) the significant overlap with the issues involved in Illumina's federal antitrust claims, on which discovery has been stayed; (2) the need to call numerous witnesses on these issues from both companies (and third parties) who do not overlap with the infringement witnesses; and (3) the need for lengthy additional instructions and verdict forms and the significant potential for jury confusion. Affymetrix proposes that, to the extent necessary after the first two phases, that discovery be reopened on Illumina's counterclaims including the issue of market power which defines both the state and federal claims, and that after discovery, Illumina's state law claims and antitrust claims would be tried in a third phase.

c. Affymetrix has a pending Motion For Summary Judgment or to stay or to bifurcate Illumina's state law counterclaims. *See* D.I. 277 and related filings.

2. The trial schedule, including the time allotted for each side. Affymetrix proposes that trial of the infringement, willfulness and damages for the five patents will take approximately 8 trial days.

3. The schedule and timing of the trial of equitable issues to the Court.

a. Assignor estoppel. Affymetrix has a pending Motion For Summary Judgment regarding Illumina's counterclaims of invalidity as to the '716 patent. *See* D.I. 272 and related filings. Affymetrix believes that the factual record is sufficiently developed in that pending motion for the Court to decide this equitable issue. If the Court does not grant this motion, this is an equitable issue for the Court to decide. Affymetrix proposes that any trial related to the issue of assignor estoppel be conducted in connection with the second phase of trial given the overlap between the validity issues and this equitable issue.

b. Allegations of inequitable conduct. Affymetrix proposes that any trial on the issue of inequitable conduct be conducted in connection with the second phase of trial given the overlap between the validity issues and these equitable issues.

c. Illumina's counterclaims pursuant to section 17200 of California state law. Illumina has alleged counterclaims upon which only equitable relief is available. Affymetrix proposes that trial of these issues be conducted in connection with the third phase of trial given the overlap with other counterclaim issues.

4. Affymetrix's asserted claims. There are five patents at issue in this litigation, each of which has multiple claims. Affymetrix has already substantially narrowed its asserted claims to get to the 22 it currently asserts. Affymetrix contends that infringement of the 22 asserted claims can be efficiently presented to the jury, and that Illumina's proposal to limit Affymetrix to five claims (no more than one claim per patent) is overly restrictive and unwarranted.

5. Illumina's failure to narrow issues for trial.

a. Illumina designated approximately 4200 pages of deposition testimony. Affymetrix requests that Illumina provide Affymetrix with reasonable designations so that Affymetrix can prepare for trial.

b. Illumina designated approximately 2100 exhibits. Affymetrix requests that that Illumina provide a revised list with the exhibits it actually may use at trial.

c. Illumina has also listed approximately 50 "physical exhibits" without providing a clear description. No physical exhibits were produced in discovery despite requests to do so. Affymetrix requests the immediate production of an example of each physical exhibit Illumina intends to offer at trial and reserves the right to object to such exhibits if they are produced.

d. Last Friday, Illumina served its Notice pursuant to 35 U.S.C. § 282, which listed 167 patent documents, 219 publications and 23 individuals with no indication of which of the references or individuals Illumina deems relevant to which of the five patents-in-suit. Affymetrix has asked Illumina to specify which of the various patents, publications and individuals Illumina actually intends to rely on at trial, and to which patent or patents-in-suit each patent, publication and individual is relevant. Illumina has declined to do so. Affymetrix requests that the Court order Illumina to provide an adequate Notice immediately.

6. Submission of motions *in limine*. The parties have agreed to file motions *in limine* on Thursday, February 15, 2007, and oppositions thereto on Thursday, February 22, 2007, and that there shall be no replies. Affymetrix proposes that motions *in limine* submitted on those dates be limited to the issues to be tried in the first phase of trial.

7. Willfulness. Whether Illumina witnesses John Stuelpnagel and/or Mark Chee should be allowed to testify as to the issues of willfulness given the late disclosure of reliance on such “opinions” in discovery (after the depositions of Stuelpnagel and Chee had already occurred), the inextricable intertwined nature of the attorney opinions which Illumina has refused to waive, and other reasons. See Affymetrix Motion *In Limine*, to be filed.

8. Damages. Both Illumina and Affymetrix close their FY 2006 financial books in the first week of February. Affymetrix will produce its updated financials sufficient for the damages experts to update their reports through calendar year 2006 by Friday, February 16, 2007. Affymetrix requests that the Court order Illumina to do the same.

9. Ownership of the ‘716 patent. Illumina continues to contend that Affymetrix does not own the ‘716 patent. This issue was decided by the Court on August 16, 2006: “the Court concludes that Affymetrix held legal title to the ‘716 patent during the period of alleged infringement and, therefore, that Affymetrix has standing to sue for infringement of the ‘716 patent.” D.I. 326 and 327. Affymetrix understands that this issue has been adjudicated and would like clarification that it is not properly involved in any phase of the trial.

EXHIBIT 17

EXHIBIT 17**MISCELLANEOUS ISSUES TO BE RAISED BY ILLUMINA AT THE PRETRIAL
CONFERENCE**

1. Affymetrix's infringement contentions at trial should be limited to (1) no more than five claims total, and (2) those claims selected from the 50 claims that were asserted during the fact discovery period (*i.e.* Affymetrix's attempt to add new claims after the fact discovery deadline should be denied). *See* DI Nos. 237 and 238. A trial with five patents and multiple claims from each patent -- Affymetrix's most recent proposal is to still try 22 claims -- is too complicated and threatens severe jury confusion.
2. Affymetrix should be compelled to produce the non-privileged document that Affymetrix confiscated with an improper claim of privilege during the deposition of Phillip McGarrigle. *See* DI Nos. 339 and 342. Throughout this case the parties have agreed to return inadvertently-produced documents when the circumstances warranted, but for this particular document there is no legitimate claim of privilege. This is simply a "bad" document that Affymetrix seeks to bury through an improper claim of privilege, and its re-production should be ordered.
3. Affymetrix should be compelled to produce a limited subset of non-public documents from its prior litigation with Incyte, based on the inconsistent positions Affymetrix has taken and the fact that Affymetrix is itself now affirmatively relying on non-public documents from that litigation. *See* DI No. 299. Though the Court has previously denied Illumina's request for all of the Incyte litigation documents in the absence of a more particularized showing of relevance, Your Honor indicated that it might revisit its ruling if a showing could be made that certain "strategizing" and "gamesmanship" had occurred. (*See* DI No. 143 (12/07/05 Hearing Tr.), at 53:9-14; 55:1-11). As discovery has played out in this case, it is clear that Affymetrix has engaged in such gamesmanship, with the result being severe prejudice to Illumina (and justice in general). As anticipated, Affymetrix has taken positions in this case that are diametrically opposed to the positions Affymetrix took in the *Incyte* litigation. Even worse, *Affymetrix had its litigation counsel from the Incyte litigation specifically review non-public documents from this prior litigation, and then Affymetrix appended two confidential pleadings from the Incyte case to its response to one of Illumina's summary judgment motions.* It goes without saying that it is fundamentally unfair for Affymetrix's lawyers to be able to cherry pick non-public documents from the prior *Incyte* litigation while refusing to grant Illumina's lawyers similar access. In light of these developments, and to level the playing field, Illumina respectfully requests that Affymetrix be ordered to produce a very limited subset of documents from the Incyte litigations.¹

¹ Illumina has narrowed its request to only those pleadings relating to the preliminary injunction motion filed by Affymetrix in the *Incyte* litigation. Affymetrix has refused even this narrow request, and has also refused to answer questions that would establish the relevance of these documents (*e.g.* questions as to whether any of the documents refer to beads or other subjects relevant to the instant case).

4. Illumina would like guidance from the Court as to how to contact third party witnesses that were represented by Affymetrix for purposes of their depositions, but whose testimony puts them in conflict with the positions that Affymetrix has taken in this litigation. Illumina believes that it may be a conflict of interest, and it is certainly prejudicial to Illumina, for Affymetrix to represent these witnesses for purposes of determining their availability to testify at trial.
5. Illumina's pending summary judgment motions: (1) Motion for Summary Judgment of Invalidity of the Asserted Claims of the '531 Patent (DI No. 275), (2) Motion for Summary Judgment of Invalidity of the Asserted Claims of the '432 Patent (DI No. 279), and (3) Motion for Summary Judgment of Inequitable Conduct and Unenforceability of U.S. Patent No. 6,646,243 (DI No. 281). Expert discovery conducted subsequent to the filing of these motions has confirmed that should be granted, and Illumina believes that the Court should entertain full briefing and rule on them prior to conducting any trial in this matter.
6. Other outstanding discovery issues that may be implicated by Illumina's forthcoming motions *in limine*. For example, to the extent the Court does not preclude Affymetrix from putting on certain evidence for which it has withheld discovery, Illumina would renew its request to obtain this discovery.